

(16,173.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 883.

WILLIAM FAXON, JR., TRUSTEE, ET AL., APPELLANTS,

vs.

THE UNITED STATES AND GEORGE W. ATKINSON
ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA, }
Territory of Arizona, } ss :

Be it remembered that heretofore, to wit, on the second day of March, A. D. 1893, there was filed in the office of the clerk of the court of private land claims, at the city of Tucson, in the Territory of Arizona, a petition ; which said petition is in the words and figures following, to wit :

UNITED STATES OF AMERICA, }
Territory of Arizona, } ss :

In the United States Court of Private Land Claims.

WILLIAM FAXON, JUNIOR, Trustee, of Boston, in the State of Massachusetts, and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, Administrator, with Will Annexed, of the Estate of Thomas Nickerson, Deceased ; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, All of Boston, State of Massachusetts, and J. W. Burgess, of Brookline ; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton ; Mrs. Abbe W. Coes, of Worcester ; Ella J. Cutting, of Newton ; Daniel Hedge, of East Dennis ; Alvin Houghton, of West Newton ; Thomas H. Knowles, of New Bedford ; Joseph K. Manning, of Medford ; W. R. Pearmain, of Chelsea ; R. M. and T. Leynolds, of Monson ; Henry A. Seaverns, of Scituate, All in the State of Massachusetts, and William H. Orcutt, of Buffalo ; J. H. Small, of Brooklyn, in the State of New York, and Thomas Sampson, of Waterville, in the State of Maine, and Lottie M. Sackett, of Warren, in the State of Ohio, *Cestuis que Trust*,

vs.

THE UNITED STATES OF AMERICA and GEORGE W. ATKINSON, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Incz Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, Deceased ; James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, Unknown Heirs of Henry Guinn, Deceased ; R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville,

Samuel G. Lewis, Thomas Lewis, Juan M. Montaño, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, Administrator of the Estate of George W. Reagan, Deceased; Juan Saldate, John Doe Saldate, Ramon Sardina, The Santa Cruz Valley Water Storage Company, a Corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanford, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a Corporation; Salero Land and Cattle Company, a Corporation; Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, The New Mexico and Arizona Railroad Company, a Corporation; Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathan Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (Whose True Names are to Plaintiffs Unknown).

- 2 The petition of William Faxon, Junior, trustee, of Boston, in the State of Massachusetts, and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, administrator, with will annexed, of the estate of Thomas Nickerson, deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, all of Boston, State of Massachusetts, and J. W. Burgess, of Brookline; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, all in the State of Massachusetts, and William H. Orcutt, of Buffalo; J. H. Small, of Brooklyn, in the State of New York, and Thomas Sampson, of Waterville, in the State of Maine, and Lottie M. Sackett, of Warren, in the State of Ohio, *cestuis que trust.*, for the confirmation of their title to the Tumacacori, Calabasas, and Huebabi private land claim.

Come now the above-named petitioners and respectfully represent to this honorable court as follows:

That as such trustee and *cestuis que trust.* they are the owners in

fee, holders and possessors of that certain tract of land, commonly known as the Tumacacori, Calabasas and Huebabi grant or private land claim, lying, being and situate in the valley of the Santa Cruz river, in the county of Pima, Territory of Arizona, and more particularly hereinafter described.

That petitioners own in fee, hold and possess such lands under and by virtue of a certain instrument in writing now and hereafter designated as and being a grant title, bearing date the 19th day of April, 1844, made and executed by the treasury department of Sonora in compliance with the law of the Mexican congress of the 10th of February, 1842, providing for the denouncement and sale of abandoned pueblos.

That under and by virtue of such law and in compliance with and furtherance of the laws and proceedings hereinafter set out, said treasury department of Sonora, by its officers duly authorized, for a good and valuable consideration, to wit, the sum of five hundred dollars in lawful money of said department of Sonora and of the Republic of Mexico, and for other good and valuable considerations in said grant title set forth and described, did, on the 18th day of April, 1844, sell and convey in fee to Don Francisco Alejandro Aguilar, the grantee therein, the lands hereinbefore mentioned and more particularly hereinafter described known as the Tumacacori, Calabasas and Huebabi grant or private land claim.

That the laws under and by virtue of which said grant was made, and the proceedings preceding the issuance of said grant, are as follows, to wit:

1st. That in the year 1806, Juan Legarro, governor of the Indian pueblo of Tumacacori, situated in the jurisdiction of Pimaria Alta, petitioned Don Alejo Garcia Conde, intendente of the province and of the royal treasury, political and military governor, and juez privativo, to issue to the Indians of the pueblo of Tumacacori a grant of lands for the "fundo legal" of the pueblo and also for the "estancia" (stock farm) of the pueblo, the grant asked for to replace the ancient title papers which had been given by the Spanish government to the Indians of said pueblo and which had been lost or destroyed; that this petition was made to the intendente in accordance with the royal instructions of the 15th day of October, 1754, and article 81 of royal ordinances and instructions in relation to the intendentes of the 4th day of December, 1786.

2nd. That in accordance with said petition, the lands petitioned for were ordered by the intendente to be surveyed by the proper officer, and on the 14th day of January, 1807, the said lands were surveyed and the boundary monuments established by Don Manuel de Leon, commandante of the presidio of Tubac.

3rd. That on the second day of April, 1807, the said Don Alejo Garcia Conde, intendente, &c., issued a royal patent or title, under the laws referred to, to the Indians of the pueblo of Tumacacori for the lands, as clearly and fully described in the proceedings in relation to the survey thereof, which proceedings are set out at length in the copy of the original expediente, and which original title or

patent was duly registered in Book No. 174, existing in the "Juzgado Privativo."

4th. That under the law of the Mexican congress of the 10th of February, 1842, providing for the denouncement and sale of abandoned pueblos, Don Francisco Aguilar, on the 18th day of April, 1844, became the owner, by purchase, for the sum of \$500, of the four square leagues of agricultural and grazing lands of the "fundo legal" of the abandoned pueblo of Tumacacori and the sitios of the estancia (stock farm) of Calabasas and the other places thereunder pertaining, the areas, boundaries, monuments, and colindantes of which are set forth in the corresponding proceedings of measurement made in the year 1807 by the commissioner and surveyor, Don Manuel de Leon; that the original proceedings of denouncement and sale to the said Aguilar are set out at length in the original expediente hereinbefore referred to, a registry of the sale and denouncement being made in the corresponding book.

That the map hereunto attached and made a part of this petition, "Exhibit A," correctly represents as near as may be the lands embraced within the said grant, the boundaries thereof, and where the same are situate.

That the original grant title or instrument of writing by which said grant was conveyed to the aforesaid grantee is not in the possession or under the control of your petitioners, but is, together with other records and papers relating to said grant, in the possession and custody of the United States surveyor general of the Territory of Arizona at the city of Tucson. That for this reason the said original documents constituting and creating said grant, together with transcripts or copies thereof cannot be herewith presented or delivered, nor can copies of said grants be now furnished, as required by the rules of this honorable court, but when by the order of this court the said original title papers are produced, your petitioners will furnish the necessary and requisite copies of each of said instruments in the Spanish and English language.

That under the provisions of the eighth section of the act of Congress, approved July 22d, 1854, entitled "An act to establish the offices of surveyor general of New Mexico, Kansas and Nebraska and to grant donations to actual settlers therein," and for other purposes, and under acts amendatory or in extension thereof, or supplemental thereto, one John Curry and one C. P. Sykes, who were then the grantees of and successors in interest to the said Aguilar, the original grantee of said grant, and who are the grantors of your petitioners, filed, on December 22, 1879, in the office of the United States surveyor general of the Territory of Arizona, their petitioner asking for the confirmation to them of said grant of Tumacacori, Calabasas and Huebabi, accompanying which petition were the original title papers of said grant. That thereupon the said United States surveyor general caused said grant to be investigated by one R. C. Hopkins, a duly authorized and competent agent of the United States, and the said United States surveyor general in his official report under date of January 7, 1880, to Congress, on

said grant, reported that the *bona fide* character of the claim was established beyond a doubt and that the signatures of the granting officers to the original title papers are unquestionably genuine, and the report of the said surveyor general recommended the confirmation to said Sykes and Curry of the lands embraced within said grant in accordance with the boundaries called for in the original title papers thereof; but that no action was taken on said report by Congress or by any authorities of the United States.

That the statements in said report are true, and that the said grant is, and at the time of the execution of the treaty known as the "Gadsden treaty" was, duly recorded in the archives of Mexico.

That your petitioners own, hold and possess said grant under and by virtue of divers and sundry mesne, conveyances made by the original grantee of said grant and his grantees to your petitioners, all of which conveyances are on file and of record in the office of the county recorder of the county of Pima, Territory of Arizona, abstracts whereof your petitioners will furnish to this court at such times and upon such terms as the court may direct.

That the original grantees of said grant were Mexicans and citizens of the Republic of Mexico, and that at the time of the Gadsden treaty the owners of the said grant were likewise Mexicans and citizens of the Republic of Mexico.

That all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete and lawful, and vested a perfect and valid title in fee thereto in the said grantee of said grant, and that said grantee at the time went into the actual possession, use and occupation of said grant, and erected the proper monuments thereon, and that said grantee and his descendants and legal representatives have continued ever since and until the present time in the actual possession, use and occupation of the same, and are now seized and possessed in fee thereof. That said grant documents constitute a complete and definitive grant in fee by way of sale coupled with the condition subsequent not to abandon the same for a longer period than three years, without good reason, which would subject the tract to adjudication to third parties who might apply for or denounce the same. That no forfeiture of said grant was ever claimed, and that your petitioners are entitled to a confirmation of said grant in accordance with the meets and bounds set forth in the original survey and grant of the same.

4 That the lands claimed by your petitioners are all the lands embraced within the original survey of said grant to the boundaries established and described therein, and that said lands are the lands embraced within the accompanying map filed herewith of said grant.

That the following-named persons are in the possession of parts of said grant and claim an interest in the lands so possessed by them, to wit:

The United States of America and George W. Atkinson, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios,

Charles Beck, J. F. Black, unknown heirs of William Bennett, deceased, James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, unknown heirs of Henry Guinn, deceased, R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville, Samuel G. Lewis, Thomas Lewis, Juan M. Montaño, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, unknown heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, administrator of the estate of George W. Reagan, deceased, Juan Saldate, John Doe Saldate, Ramon Sardina, the Santa Cruz Valley Water Storage Company, a corporation, Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanford, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a corporation, Salero Land and Cattle Company, a corporation, Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, the New Mexico and Arizona Railroad Company, a corporation, Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker.

That the defendants, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathan Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (whose true names are to plaintiffs unknown), each claim an interest in the lands possessed by them, but that their true names are unknown to petitioners, and they are therefore named by fictitious names, and your petitioners ask that when their true names are discovered this petition may be amended accordingly.

That the possession of all of such persons above named is claimed to be adverse to the title of your petitioners and adverse to said grant.

Wherefore, petitioners pray that the validity of their said title may be inquired into and decided, and that the title of your petitioners to said lands be declared valid; and for such other and further relief as to the court may seem meet and proper in the premises.

FRANCIS J. HENEY,
Attorney for Petitioners.

(Endorsed:) Case No. 8. In U. S. court of private land claims. William Faxon, Jr., trustee, *et al. vs.* The United States of America



et als. Petition for the confirmation of title to the Tumacacori, Calabasas, and Huebabi private land claims. Filed in the office of the clerk court of private land claims March 2, 1893. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Here follows map marked page 5a.)

5 And be it further remembered that, to wit, on said second day of March, A. D. 1893, a summons was issued by the clerk of said court; which said summons, with all endorsements thereon, is as follows, to wit:

6 *Summons.*

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, } ss:
District of Arizona,

WILLIAM FAXON, JUNIOR, Trustee, of Boston, in the State of Massachusetts, and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, Administrator, with Will Annexed, of the Estate of Thomas Nickerson, Deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, All of Boston, State of Massachusetts, and J. W. Burgess, of Brookline; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, All in the State of Massachusetts, and William H. Orcutt, of Buffalo; J. H. Small, of Brooklyn, in the State of New York, and Thomas Sampson, of Waterville, in the State of Maine, and Lottie M. Sackett, of Warren, in the State of Ohio, *Cestuis que Trust.*, Plaintiffs,

vs.

To THE UNITED STATES OF AMERICA and GEORGE W. ATKINSON, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, Deceased; James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, Unknown Heirs of Henry

Guinn, Deceased; R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville, Samuel G. Lewis, Thomas Lewis, Juan M. Montañño, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, Administrator of the Estate of George W. Reagan, Deceased; Juan Saldate, John Doe Saldate, Ramon Sardina, The Santa Cruz Valley Water Storage Company, a Corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanford, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a Corporation; Salero Land and Cattle Company, a Corporation; Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, The New Mexico and Arizona Railroad Company, a Corporation; Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathan Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (Whose True Names are to Plaintiffs Unknown), Defendants.

Petition filed in the clerk's office this second day of March, A. D. 1893.

- 7 The President of the United States of America to The United States of America and George W. Atkinson, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, Deceased; James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, Unknown Heirs of Henry Guinn, Deceased; R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville, Samuel G. Lewis, Thomas Lewis, Juan M. Montañño, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, An-

tonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, Administrator of the Estate of George W. Reagan, Deceased; Juan Saldate, John Doe Saldate, Ramon Sardina, The Santa Cruz Valley Water Storage Company, a corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanford, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a Corporation; Salero Land and Cattle Company, a Corporation; Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, The New Mexico and Arizona Railroad Company, a Corporation; Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathan Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (whose true names are to plaintiffs unknown), defendants, Greeting:

You, and each of you, are hereby notified that an action has been brought in said court, by William Faxon, Junior, trustee, of Boston, in the State of Massachusetts; and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, administrator, with will annexed, of the estate of Thomas Nickerson, deceased, Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, all of Boston, State of Massachusetts; and J. W. Burgess, of Brookline; Mrs. Eliza J. Clum, and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, all in the State of Massachusetts; and William H. Orcutt, of Buffalo; J. H. Small, of Brooklyn, in the State of New York; and Thomas Sampson, of Waterville, in the State of Maine; and Lottie M. Sackett, of Warren, in the State of Ohio; *cestuis que trust.*, plaintiffs, against you as defendants, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain states and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you and that you are required to appear and plead, demur or answer to the petition filed in said action, in said court, within thirty days after the service of this summons upon you, and if you fail so to do, the said

plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at [SEAL.] the city of Tucson, Arizona Territory, in said district, this 2nd day of March, A. D. 1893, and of the Independence of the United States the 116th year.

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy Clerk*.

8 TERRITORY OF ARIZONA, } ss:
County of Pima,

Thomas F. Gibson, of lawful age, being duly sworn according to law, makes oath and says that he received the within summons in the case of William Faxon, Jr., trustee, *et al.*, plaintiffs, *vs.* The United States of America, George W. Atkinson, *et al.*, defendants, on the second day of March, A. D. 1893, and personally served the same on the 4th day of April, 1893, on Theodore Martinez, G. R. McCorkle, for S. B. McCorkle, deceased; W. H. Good, Leon Aguayo, Fidel Aguayo, Jose Maria Valdez, Zenobia Villa & Son, Mrs. William Bennett, and Benito Estrada, being defendants named in said summons, by personally delivering and leaving with said defendants and each of them personally, in the said county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

Further personally served the same on the fifth day of April, 1893, on Mrs. Henry Guinn (now Mrs. Jack Wisdom), Thomas Lewis, James Breen, Benjamin H. Page, Juan M. Montano, Samuel G. Lewis, William E. Key, and George Beckwith, being defendants named in said summons, by personally delivering and leaving with said defendants and each of them personally, in the county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

Further, personally served the same on the eighth day of April, 1893, on T. Lillie Mercer, being a defendant named in said summons, by personally delivering and leaving with said defendant personally, in the said county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

9 Further, personally served the same on the 14th day of April, 1893, on Joseph E. Wise, being a defendant named in said summons, by personally delivering and leaving with said defendant personally, in the county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

THOMAS F. GIBSON.

Subscribed and sworn to before me, at Nogales, Arizona, this 29th day of April, 1893.

[NOTARIAL SEAL.] H. J. WOOD,
Notary Public, Pima Co., A. T.

10 TERRITORY OF ARIZONA, }
County of Pima, } ss:

Thomas F. Gibson, of lawful age, being duly sworn according to law, makes oath and says that he received the within summons in the case of William Faxon, Jr., trustee, *et al.*, plaintiffs, *vs.* The United States of America, George W. Atkinson, *et al.*, defendants, on the second day of March, A. D. 1893, and personally served the same on the second day of June, 1893, on John Doe Henderson, a defendant named in said summons, by personally delivering and leaving with said defendant personally, in the said county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

Further personally served the same on the 8th day of July, 1893, on J. E. Black, being a defendant named in said summons, by personally delivering and leaving with said defendant personally, in the said county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

THOMAS F. GIBSON.

Subscribed and sworn to before me, at Nogales, Arizona, this 13th day of December, 1893.

[NOTARIAL SEAL.]

D. J. CUMMING,
Notary Public, Pima County, A. T.

11 TERRITORY OF ARIZONA, }
County of Pima, } ss:

Lautaro Roca, being duly sworn according to law, makes oath and says that he is above the age of twenty years and has no interest in the suit hereinafter mentioned; that he received the within summons in the case of William Faxon, Jr., trustee, *et al.*, plaintiffs, *vs.* The United States of America *et al.*, defendants, on the 5th day of December, 1893, and personally served the same on the same day upon Samuel Hughes, Thomas Driscoll, Merrill P. Freeman, as agent of the Santa Cruz Water Storage Company, personally, being defendants named in said summons, by personally delivering and leaving with said defendants and each of them personally, in the said county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in said action.

And that he further personally served the same on the 6th day of December, A. D. 1893, upon Fred. Maish, being one of the defendants named in said summons, by personally delivering to and leaving with said defendant, in the said county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

And further personally served the same on the 16th day of December, A. D. 1893, upon Thomas Forsythe, being one of the defendants named in said summons, by personally delivering and leaving with said defendant personally, in the said county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

And further personally served the same on the 16th day of January, A. D. 1894, upon W. C. Davis, one of the defendants
 12 named in said summons, by personally delivering to and leaving with said defendant personally, in the county of Pima, a copy of said summons, together with a true and correct copy of the complaint or petition in this action.

LAUTARO ROCA.

Subscribed and sworn to before me this 22nd day of March, 1895.

[NOTARIAL SEAL.]

W. G. POWER,
Notary Public, Pima Co., Ariz.

13 United States Court of Private Land Claims, District of Arizona.

WILLIAM FAXEN, JR., Trustee, *et al.*, Plaintiff,

vs.

THE UNITED STATES OF AMERICA and GEORGE W. ATKINSON
et al., Defendants.

Due and legal service of the within summons and a copy thereof and a copy of the complaint filed in the above-entitled cause is hereby acknowledged for each of the following-named defendants, to wit, William Thomas Linnville, H. O. Flipper, C. P. Sykes, Thomas D. Casanega, Eugene K. Sykes, R. E. Key, Joseph E. Wise, John A. Lucas, Solomon B. Wise, F. M. Vernon, Antonio Proto, Louis Proto, Proto Brothers, Harvey S. Walker, William H. Walker, Rafael Vasquez, Ramon Sardina, G. R. McCorkle, Lorenzo Aguayo, Edwin Egan, Pedro Cordova, Manuel Ronquillo, Mateo Estrada, Jesus Arviso, Dem-trio Banios, Mariano Valdez, Aponio Valdez, Francisco S. Acebedo, Gerardo Acebedo, Claudie Acebedo, John Doe Arenas (alias Ignacio Aries), John W. Fuqua, Francisco Moreno, Francisco Castillo, Juan Morietta, James W. Luhy, Eugene K. Sykes, administrator of the estate of George W. Reagan, deceased; John Doe Saldate (alias Tiburcio Saldate), Carmen Mendez, Joseph King, Domingo Laguna, Tomas Cota, Timoteo Fierras, Antonio Fierras, Fierras Brothers, Ramon Saabedra (alias Dario Saabedra), Saabedra Brothers, Timoteo Ramirez, Fernando Carranza, Henry W. Low, George W. Atkinson, Don A. Sanford, Bartalo Figueroa, Francisco Romaro, Bernardo Romaro, Inex Andrade, Refugio Larmos, Joseph Piskorski, Frederick Beckwith, Beckwith Brothers, D. B. McCullough, Charles Beck, Pauline Jones, Mrs. Rosa
 14 Johnson, James Peters, James W. Goodman, Robert J. Goode (alias R. H. Good), Juan Saldate.

BARNES & MARTIN,
 W. H. BARNES,
 J. H. MARTIN,

Attorneys for said Defendants.

Dated Tucson, Arizona, March 20, A. D. 1893.

15 (Endorsed :) General No., 8. United States court of private land claims, district of Arizona. William Faxon, Jr., trustee, *et al.*, plaintiffs, *vs.* The United States of America and George W. Atkinson *et al.*, defendants. Summons. Filed this 22d day of March, A. D. 1895. James H. Reeder, clerk, by R. L. Long, deputy clerk. Francis J. Heney, attorney for petitioners, Tucson, Arizona.

16 Be it further remembered that thereafter, to wit, on the 10th day of June, 1893, there was filed in the office of the clerk of said court at Santa Fé, New Mexico, a petition; which petition is in the words and figures following, to wit:

In the United States Court of Private Land Claims, Territory of Arizona.

GEORGE HILL HOWARD }
vs. } No. —.
 THE UNITED STATES. }

Tumacacori, Calabazas, and Huevavi grants.

Amended Petition.

To their honors the judges of said court:

Your petitioner, George Hill Howard, praying leave to amend his petition heretofore filed (which has not been pleaded to), and to file this as an amended petition, respectfully represents as follows:

1. That in 1806 Juan Legarra, governor of the ancient pueblo of Tumacacori, petitioned the intendente of the province of Sonora to issue to the Indians of said pueblo a grant of lands for the fundo legal and estancia of the pueblo, said petition accord- with the requirements of the royal instructions of October 15th, 1754, and article 81 of the ordinances de intendentes of December 4, 1786, and in compliance therewith the grant was made for four square leagues as the fundo legal, and the same was surveyed to the boundaries of the presidio of Tubac and to the place called Calabazas; that
 17 then the estancia or stock farm was surveyed so as to include the place called Guevavi or Huevavi.

2. That on the abandonment of the presidio of Tubac the mission of the Tumacacori was abandoned and the inhabitants of the Indian pueblo deserted it, and on February 10, 1842, the Mexican congress enacted a decree for the sale for the benefit of the public treasury of the abandoned pueblo and mission of Tumacacori and the estancia thereof, embracing the places of Calabazas and Huevavi.

3. That in pursuance of said decree the whole of said property was duly and legally sold at public auction on April 14, 1844, by the board of sale, for the sum of \$500, and in accordance therewith Ignacio Lopez, being treasurer general of the department of Sonora, executed a title under the official seal of the treasury to the purchaser, Francisco Alejandro Aguilar, of the fundo legal and estancia of the Indian pueblo of Tumacacori, including said sitios of Huevavi and Calabazas.

4. That by due legal conveyance the said Aguilar, on May 2, 1869, sold and transferred said property in its entirety to Don Manuel Maria Gandara.

5. That subsequently thereto, to wit, on July 6, 1864, said Gandara, by a valid deed *in presenti*, conveyee that portion of said grant and property known as the lands Guebavi, being one square league of 5,000 Castilian varas square, to one Claude Jones, and on August 1, 1876, the same was duly recorded.

6. That on November 15, 1865, said Jones, for a valuable consideration, by due and legal deed, conveyed such Guebavi league to Isaac Domingo Marks and Edson Adams, which deed was duly recorded August 1, 1876, and on April 16, 1878, said Isaac Domingo Marks, for a good and a valuable consideration, conveyed by valid deed the whole of his undivided one-half interest in the league of Guebavi to one Joshua Marks, which deed was duly recorded February 17, 1882.

7. That on August 23, 1878, said Joshua Marks, for a good and valuable consideration, conveyed all of his undivided interest in the league of Guebavi to one Edward F. Head, which deed was duly recorded February 17, 1882, and on November 28, 1881, said Head, for a good consideration, conveyed all of his undivided interest in and to the league of Guebavi to said Edson Adams, which conveyance was duly recorded February 17, 1882.

8. That on June 30, 1883, said Edson Adams (being by the deed of conveyance of W. Claude Jones to Isaac Domingo Marks and Edson Adams, bearing date November 15, 1865, the owner of an undivided one-half interest in said Guebavi league, and said Edson Adams having by the deed to him of Edward F. Head, bearing date November 28, 1881, acquired the other undivided one-half interest therein, which had been vested in Isaac Domingo Marks by the deed of said Jones), by a due and valid deed bearing date June 30, 1883, for a good and valuable consideration, conveyed the whole and entire Guebavi league to George Hill Howard, your petitioner, which deed was duly recorded September 5, 1883.

9. And your petitioner further represents that each and all of said sundry deeds of conveyance referred to in paragraphs 5, 6, and 7 were duly filed, together with properly authenticated translations thereof, with the surveyor general of Arizona and are annexed as exhibits to his official report on this grant to the Commissioner of the General Land Office of date September 20, 1883, and are printed therewith in Senate executive document No. 53 of the first session of the 48th Congress, duplicate copies of which document are filed in this case.

10. That the Tumacacori y Calabazas grant was promptly presented by W. Claude Jones to the surveyor general of Arizona on June 9, 1864, for examination under section 8 of the act of July 22, 1854, but action thereon was declined because said act had not at that time been made applicable to the territory acquired under the Gadsden purchase; that thereafter, as is alleged, said Manuel made a conveyance of some interest remaining in him in and to this grant to one John Curry and one Charles P. Sykes,

and this grant was by them again presented to the surveyor general of Arizona for action in 1879, and on January 7, 1880, said grant was recommended to Congress for confirmation to said Curry and Sykes; that on January 7, 1882, Edson Adams presented his petition to the surveyor general, accompanied by full proof of his interest in the grant of the league of Guebavi, and asked that a supplementary report be made showing his interest therein in order that he might be included in the final act of confirmation, and that patent might be issued to him for the portion of the Rancho Tumacacori and Las Calabazas described in his conveyances, and thereafter your petitioner, George Hill Howard, filed a petition with the surveyor general, accompanied by the deed of said Adams hereinbefore described, asking that he be substituted for said Adams in said report; that on September 20, 1883, said surveyor general made a supplemental report transmitting to the Commissioner of the General Land Office the petitions of said Adams and Howard, with the evidence adduced by them, and the House Committee on Private Land Claims filed a supplemental report (No. 518, 48th Cong., 1st sess.) recommending the confirmation of said grant to Manuel Maria Gandara, his heirs or assigns.

11. That said grant was surveyed under the authority of the surveyor general of Arizona, and said survey was by him approved April 3, 1880; that the map herewith filed is a copy of the plat of said survey.

20 12. That there are no mines or minerals of gold, silver, or quicksilver within the limits of said tract.

13. That your petitioner is informed and believes that there are parties within the limits of said tract claiming adversely to said grant upon some ground or pretended claim under the United States whose names and locations are not known to your petitioner, and your petitioner prays that a rule may issue on the United States register at Tucson, Arizona, requiring him to furnish to this court a list of the names of parties and locations and the status of the same appearing upon the records of his office within the limits of said grant under the laws of the United States.

14. That the original matrix or archive copy and evidence of said grant, the original testimonio of which was, under and in pursuance of the laws, usages, and customs, made, issued, and delivered by the granting authorities to the grantee as his evidence of title, which is in the office of said surveyor general, is in and forms part of the archives of the Republic of Mexico at Hermosillo, State of Sonora.

15. That your petitioner is not advised who represents the Tumacacori and Calabazas grant as present owner other than as hereinbefore set forth.

Whereofre your petitioner prays that the validity of said grant may be inquired into and determined by this court, and that the Huevavi league may be confirmed to your petitioner and the balance to said Sykes, his heirs and assigns.

(Signed)

GEORGE HILL HOWARD,

In Propria Persona.

JEFFRIES & EARLE, *Of Counsel.*

21 (Endorsed :) No. 162. (File No. 2.) (Title of court and cause.) Amended petition. Tumacacori, Calabazas, and Huevavi grant, Arizona. Filed in the office of the clerk court of private land claims Jun- 10, 1893. Jas. H. Reeder, clerk, by I. L. Chaves, deputy.

22 And be it further remembered that thereafter, to wit, on the 2nd day of March, A. D. 1893, there was filed in the office of the clerk of said court, at Tucson, in the Territory of Arizona, a petition; which said petition is in words and figures following, to wit:

UNITED STATES OF AMERICA. }
Territory of Arizona, } ss:

In the United States Court of Private Land Claims.

DOLORES G. ASTIAZARAN, JESUS A. DE OCEGUEZ, FRANCISCO Ocegüera, Carmen O. de Espriu, Augustina O. de Robinson, Francisco Gandara, Migel Gandara, Ana Gandara, Trinidad Aguilar, Fernando Aguilar, Anita Aguilar, Jesus Aguilar, Carmen Aguilar, Victor Aguilar, and Santiago Ainsa, Administrator, with the Will Annexed, of Frank Ely, Deceased,

vs.

THE UNITED STATES OF AMERICA and WILLIAM FAXON, JUNIOR, Trustee; J. W. Bailey, Hiram Barker, Clarence W. Barron, Ads D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nicherson; Francis J. Heney, Administrator, with the Will Annexed, of the Estate of Thomas Nicherson, Deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilber, William Bassett, J. W. Burgess, Mrs. Eliza J. Clum, J. Sumner Webb, Mrs. Abbe W. Coes, El-a J. Cutting, Daniel Hedge, Alvin Houghton, Thomas H. Knowles, Joseph K. Manning, W. R. Pearman, R. M. and T. Reynolds, Henry A. Seaverns, William H. Orcutt, J. H. Small, Thomas Sampson, and Lottie Sackett, *Cestua que Trust.*

23 The petition of Dolores G. Astiazaran, Jesus de Ocegüera, Francisco Ocegüera, Carmen O. de Espriu, Augustina O. de Robinson, Francisco Gandara, Migel Gandara, Ana Gandara, Trinidad Aguilar, Fernando Aguilar, Anita Aguilar, Jesus Aguilar, Carmen Aguilar, Victor Aguilar, and Santiago Ainsa, administrator, with the will annexed, of Frank Ely, deceased, for the confirmation of their title to the Tumacacori, Calabazas, and Huebabi private land claim.

Come now the above-named petitioners and respectfully represent to this honorable court as follows:

That your petitioner Santiago Ainsa is the administrator, with

the will annexed, of Frank Ely, deceased, duly qualified and acting as such by virtue of letters of administration issued to him on the — day of November, A. D. 1891, by the probate court of the county of Pima, Territory of Arizona.

That your petitioners are the owners in fee, holders, and possessors of that certain tract of land commonly known as the Tumacacori, Calabasas, and Huebabi grant or private land claim, lying, being, and situate in the valley of the Santa Cruz river, in the county of Pima, Territory of Arizona.

That your petitioners own in fee, hold, and possess such lands under and by virtue of a certain instrument in writing now and hereafter designated and being a grant title bearing date the 19th day of April, 1844, made and executed by the treasury department of Sonora in compliance with the law of the Mexican congress of the 10th of February, 1842, providing for the denouncement and sale of abandoned pueblos.

24 That under and by virtue of such law and in compliance with and furtherance of the laws and proceedings thereunto appertaining, said treasury department of Sonora, by its officers duly authorized, for a good and valuable consideration, to wit, the sum of five hundred dollars in lawful money of said department of Sonora and of the Republic of Mexico, and for other good and valuable considerations in said grant title set forth and described, did, on the 18th day of April, 1844, sell and convey in fee to Don Francisco Alejandro Aguilar, the grantee therein, the lands hereinbefore mentioned known as the Tumacacori, Calabasas, and Huebabi grant or private land claim.

That the laws under and by virtue of which said grant was made and the proceedings preceding the issuance of said grant are those set out in full in the petition filed in this honorable court on this day, to wit, the 2nd day of March, A. D. 1893, in the petition of William Faxon, Junior, trustee, and his copetitioners, being the same persons who are made defendants to this petition *versus* The United States of America and George W. Atkinson *et al.*, wherein said Faxon and his copetitioners pray that the said grant of Tumacacori, Calabasas, and Huebabi be confirmed to them.

Your petitioners now further represent that all the allegations of the said petition of said Faxon and his copetitioners are true except the allegations that said Faxon and his copetitioners own, hold, or possess said grant or any part of it, and your present petitioners allege that as heirs and grantees of Don Francisco Alejandro Aguilar, the original grantee of said grant, they, your present petitioners, are the owners in fee of all of same, and that said Faxon and his copetitioners do not own the same or any part thereof, nor have they any right, title, or interest thereto or *there* therein in law and equity, and that your petitioners will, at such times

25 and on such terms as this honorable court may order, furnish the conveyances and the family tree or an abstract thereof under and by virtue of which your petitioners own, hold, and possess the said grant.

Your petitioners further represent that the map attached as
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Exhibit "A" to the aforesaid petition of the said William Faxon, Junior, and his copetitioners, filed in this court this day, correctly represents as near as may be the lands embraced within the said grant, the boundaries thereof, and where the same are situated.

And your petitioners pray that in order to avoid repetition all the allegations of said petition of said Faxon and his copetitioners, except as said Faxon and his copetitioners claim title in themselves to said grant, be taken as a part of this petition as fully as though set out in full herein.

Wherefore petitioners pray that the validity of their said title may be enquired into and decided, and that the title of your petitioners to said lands be declared valid, and for such other and further relief as to the court may seem meet and proper in the premises.

SELIM M. FRANKLIN,

Attorney for Petitioners.

Endorsed as follows: Case No. 9. Dolores G. Astiazaran *et als. vs.* The United States *et als.* Petition for confirmation of the Tumacacori, Calabasas, and Huebabi grant. Filed March 2, 1893. James H. Reeder, clerk, by R. L. Long, deputy. Selim M. Franklin, att'y for petitioners.

26 And be it further remembered that on the 11th day of December, 1893, being a day of the regular December term of said court, the court made the following order, to wit:

DOLORES G. ASTIAZARAN *et als.* }
 vs. } No. 9.
 UNITED STATES *et als.* }

On motion of Matt. G. Reynolds, Esqr., attorney for the United States, the court ordered that the above-entitled cause be consolidated with the cause on file entitled "William Faxon, Jr., trustee, *et als. vs.* United States *et als.*," and numbered 8, and said cause shall hereafter be known and designated under the last-named number and title.

And be it further remembered that on the said 11th day of December, 1893, being a day of a regular term of said court held at Tucson, Arizona, the court made the following order:

27 In the Court of Private Land Claims, Arizona District.

WILLIAM FAXON, JR., Trustee, *et als.* } No. 8, Consolidated. Calabasas, Tumacacori, and
 vs. } Huebabi Grants.
 UNITED STATES *et als.* }

On motion of Matt. G. Reynolds, Esq., attorney for the United States, made in open court on this the eleventh day of December, 1893, it is ordered that the plaintiff in the above cause file with the clerk of this court, at Tucson, Arizona, on or before January 15, 1894, for

the inspection of the attorney of the United States, all grant papers, evidences of title, and documents of whatever kind and *anture* which said plaintiff expect to offer in evidence in the above-entitled cause, with copies and translations of the same; also that said plaintiff file with the clerk of this court on or before said date, to wit, January 15, 1894, for the purpose aforesaid, all original papers in his possession or under his control purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Republic of Mexico to the property described in the bill of complaint herein or any part thereof, with translations or copies of the same; also that said plaintiff file with the clerk of this court on or before said date, to wit, January 15, 1894, for the purpose aforesaid, a duly authenticated transcript of all records and documents, the original of which are not under the control of said plaintiff, purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Mexican Republic to the land described in plaintiffs' bill of complaint herein or any part thereof which you expect to introduce in evidence; also that said plaintiff file with the clerk of this court on or before January 15, 1894, for the purpose aforesaid, all original deeds, with copies and translations thereof, and mesne conveyances, with copies and translations thereof, by which they and each of them claim title through and under the original grantee to the grant described in the petition of said plaintiff.

It is further ordered that the clerk of this court transmit by mail a duly certified copy of this order to — —, attorney for plaintiffs in this cause.

28 Be it further remembered that thereafter, to wit, on the 26th day of March, 1894, the same being a day of the regular March term, 1894, holden at Tucson, Arizona, the court made the following order:

GEO. HILL HOWARD	} No. 162.
vs.	
THE UNITED STATES.	

On motion of the U. S. attorney, it is ordered that the cause be consolidated with the case numbered 8 on the register.

Be it further remembered that thereafter, to wit, on the 15th day of August, 1894, being a day of a regular term of said court held at Santa Fé, New Mexico, the court made the following order, to wit:

It is her-by ordered that in all cases pending in the district of Arizona plaintiffs are hereby ordered to file with the clerk of the court of that district on or before Sept. 20, 1894, all original documents upon which they expect to rely in establishing title in the original grantees, together with three copies and translation of the same. If the original documents are not in their possession or under their control, then certified copies of the same shall be filed.

It is further ordered that all mesne conveyances, together with copies and translations, shall be filed within said time and an abstract of deraignment of title from the original grantee to the

plaintiffs shall be served upon the United States attorney on or before the 25th of Sept., 1894, and the clerk is hereby ordered to enter this order of record and to mail to counsel in each case a copy of this order.

And be it further remembered that thereafter, to wit, on the 25th day of March, 1895, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA, ss:

In the Court of Private Land Claims, Arizona District, 1895.

WM. FAXON, Trustee, *et al.*

vs.

UNITED STATES.

D. G. ASTIAZARAN *et al.*

vs.

UNITED STATES.

GEORGE HILL HOWARD

vs.

UNITED STATES.

Nos. 8, 9, and 162, Consolidated.

Answer.

Comes now the United States and by leave of court files this its separate answer to the various petitions filed and consolidated in the above-entitled causes, and, answering so much thereof as it is advised to be necessary, says:

It denies that the plaintiffs or any of them are owners in fee, holders, and possessors of a certain tract of land commonly known as the Tumacacori, Calabasas, and Huebabi grant or private land claim lying and being in the county of Pima and Territory of Arizona.

It denies that said plaintiffs hold and possess land under and by virtue of a certain instrument of writing designated as grant title, bearing date the 19th day of April, 1844, alleged to have been executed by the treasury department of Sonora in compliance with the law of the Mexican congress of the 10th of February, 1842, providing for the denouncement and sale of abandoned pueblos, for that no such law as the 10th of February, 1842, authorized the sale by the department of Sonora or any official thereof or any official of the nation of such lands as those of abandoned pueblos, and more particularly of abandoned missions.

That as to whether or not the treasury department of Sonora, through any of its officers, or for the consideration of the sum of five hundred dollars or of any other sum, on the 18th day of April, 1844, sold and conveyed to one Don Francisco Ale-

jandro Aguilar said lands or private land claim it has no information, but that, if they did so, it was without warrant or authority of law and void.

Further answering, it says that as to whether or not said lands had theretofore been granted to the Indian pueblo of Tumacacori by proceedings initiated in 1806 and concluded on the 2nd day of April, 1807, as set forth in said petition, it has no knowledge or information sufficient to enable it to form a belief, but says, if the same be true, that said land was abandoned about the year 1820 and by virtue thereof became public lands thereof; that the title to said property, if any, that was passed was purely usufructu-ry and vested no estate, legal or equitable, in the said alleged pueblo or mission, but the same and the right of disposition was reserved to and remained in the national government.

Further answering, it denies that under the law of the 10th of February, 1842, said Aguilar, on the 18th day of April, 1844, became the owner, by purchase or otherwise, of any lands included in the alleged grant of 1807 to the pueblo of Tumacacori, as alleged in said petition, or any part thereof, or to the lands of the mission of Tumacacori and its dependanc-es.

It denies that the map or tracing of said alleged grant is correct according to the alleged grant to the Indian pueblo of Tumacacori of 1807 or the mission thereof.

It denies that the statements, either of law or fact, contained in the report of the surveyor general of Arizona, dated January 7, 1880, made under the provisions of an act approved July 22, 1854, and acts amendatory thereto, are true.

It denies that the said grant is or ever was located and recorded as provided by the 5th article of the treaty of Mesilla, executed on the 30th day of December, 1853, and ratified June 30th, 1854.

33 It denies that the plaintiffs own, hold, and possess said grant under diverse and sundry mesne conveyances made by the original grantee and his grantees, but that, if they assert such a claim to the same, it is without merit and null and void, in this, that the said original grantee never had any title, either legal or equitable, thereto.

That as to whether or not said original grantee or any of his transferees were Mexican citizens, it has no knowledge or information, but denies that they or any of them were ever owners of said property as against the Republic of Mexico or are now owners against the United States or its grantees.

It denies that the alleged steps and proceedings in the matter of the grant and the sale of said lands, as set forth in the petition, were regular, complete, and lawful, and denies that the same, if taken as alleged, vested a perfect and valid title in fee or in equity thereto in the said grantee.

It denies that said grantee at said time, to wit, in the year 1844, went into actual possession, use, and occupation of said grant and erected monuments thereon, for the reason that at the time of said alleged grant, in the year 1844, no description of said property was known or set forth by which proper monuments could be erected.

It denies that said grantee and his said legal representatives have continued ever since and until the present time in the actual possession, use, and occupation of the same.

It denies that they are now seized and possessed in fee or in equity thereof.

It denies that the said alleged grant documents constitute a complete and definite grant in fee or in equity, by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years without good reason, which would subject the tract to adjudication of the third parties who might apply for or debar the same.

It denies that no forfeiture of said grant was ever claimed, but, on the contrary, says that said alleged proceedings, as set forth in said petition, were never taken under the express order or approval of the general government and *was* never submitted to said general government for ratification or approval, and were therefore declared null and void under and by virtue of the decree of November 25, 1853, and said transfer to the United States under the treaty of Mesilla was a resumption of sovereignty over the same and forfeiture thereof.

The United States took the same free and clear of any encumbrance, claim, or right by virtue of said proceedings, as set forth in said proceedings.

It denies that the plaintiffs are entitled to confirmation of said grant or any part thereof in accordance with the metes and bounds set forth in the alleged original survey of the same.

Further answering, it says that the lands claimed by plaintiffs, if said alleged proceedings were regular, valid, and in due form, *it was* a great deal more than that contained in the said original survey.

It says that said alleged grant or patent was a sale, if at all, by quantity and limited to six sitios and no more, and the same was the only quantity of land paid for by the alleged grantee, if any payment at all were in fact made.

Further answering, it says that no official or officials of any department of the Republic had authority to issue final titles of sale to the public lands until after the same had been submitted to the treasury of the national government and approved by it and authority given therefor, based upon the proceedings or expediente to issue final title or grant, and it pleads that this grant was without warrant or authority of law, in this, that proceedings were not submitted to the national government for approval before the final issue of the patent, as provided by law.

That said proceedings were otherwise improper and void and conformed to no law of the Republic of Mexico, and said grant is so indefinite and uncertain as to description as to carry no title to any land.

Further answering, it says that said claim is not one which under the laws of nations and treaty of cessions is entitled to confirmation, and it therefore prays that said grant be rejected, declared null and void, and the petition dismissed.

Respectfully submitted.

MATT. G. REYNOLDS,

U. S. Attorney.

(Endorsed :) No. 8, 9, & 132 (consolidated). Wm. Faxon, Jr., trustee, *vs.* U. S. *et als.*; D. G. Astiazaran *vs.* U. S. *et als.*; Geo. Hill Howard *vs.* U. S. *et als.* Answer. Filed in the office of the clerk court of private land claims March 25, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy. Matt. G. Reynolds, U. S. att'y.

36 And be it further remembered that thereafter, to wit, on the twenty-fifth day of March, A. D. 1895, the same being a day of the regular March term, 1895, holden at the city of Tucson, Arizona Territory, the causes so consolidated came on for trial.

Francis J. Heney, Esqr., appeared for the plaintiff- William Faxon, Jr., trustee, *et als.*, and Selim M. Franklin, Esqr., appeared for the plaintiffs Dolores G. Astiazaran *et als.*

Matt. G. Reynolds, Esqr., appeared for the United States, and W. H. Barnes, Esqr., for the other defendants.

Mr. W. B. Tichenor was sworn as stenographer to assist the official stenographer in taking down the testimony in the case, the report of the trial to be afterwards certified to by the official stenographer.

The trial of this cause not being concluded, the same was resumed on the following days, to wit, the 26th, 27th, 28th, and 29th days of March, 1895, when the same was concluded.

On the trial of said cause the following testimony, oral and documentary, was offered and introduced :

37 UNITED STATES OF AMERICA, {
Territory of Arizona. }

In the Court of Private Land Claims, March Term, A. D. 1895.

WM. FAXON, JR., Trustee, *et al.* }
vs. } No. 8, Consolidated.
THE UNITED STATES *et al.* }

Involving the title to the Calabasas, Tumacacori, and Guebabi grants, situate in Territory of Arizona.

Counsel : Francis J. Heney, Esq., for petitioners ; S. M. Franklin, Esq., for Santiago Ainsa, administrator ; Matt. G. Reynolds, Esq., for the United States ; Wm. H. Barnes, of counsel.

Transcript of shorthand notes of testimony, etc., taken upon the trial of the above-entitled cause, taken at the court-room of said court, in the city of Tucson, Pima county, Arizona, on Monday, the 25th day of March, A. D. 1895, *et seq.*, at 10 o'clock a. m. of said day.

By Mr. HENRY : I wish to withdraw some translations filed, which we have found to be inaccurate in some respects, and file other translations in their place.

By the COURT : Very well ; you may make the substitution.

38 By Mr. HENY (to the clerk) : I wish to substitute these

for the translations filed of the photographic copies of the papers. (Counsel handed documents to the clerk.)

The court granted leave to amend our petition, and we filed in amendment a map which is slightly different to the map attached to the petition. It is barely possible I shall ask the leave of the court to amend our petition after the evidence is in, in order that it may conform to the evidence in reciting the fact that the expediente has been lost and destroyed, which expediente was originally in the archives. That is the only change.

Counsel read petition filed in this cause.

Mr. Reynolds read the answer of the United States.

By Mr. FRANKIN: There is also another petition and an answer thereto on behalf of another lot of claimants which petition reiterates and repeats all of the allegations in the petition and complaint of Wm. Faxon, Jr., trustee, except that Francisco Aguilar in his lifetime ever conveyed the property, and that we as the heirs are the owners of it and not Wm. Faxon, Jr., trustee. So far as this court is concerned, I believe we join our hands as against the United States.

By Mr. HENEY: There is also another case, entitled George Hill Howard against The United States, and at the very outset we disavow any connection with Mr. Howard in connection with the confirmation of this title and with reference to proceeding with him or in connection with him in any way in the matter, or that he represents us or any of our grantors in any manner in these proceedings.

By Mr. REYNOLDS: I desire the record to show leave to file answer on behalf of the Government. I have already had made an order consolidating these causes, and I think the answer covers them all. I will state that all three of these petitions are for the confirmation of the same grant under the same grant papers.

By the COURT: Very well; proceed.

BARTOLOMEO ROCHIN, a witness called and sworn on behalf of the petitioners, testified through the medium of the official interpreter of this court as follows:

Direct examination.

By Mr. HENEY:

Q. State your full name, age, and where you reside.

A. Bartolomeo Rochin; I am 48 years of age, and I reside in Hermosillo.

Q. Are you a citizen of the Mexican Republic?

A. I am.

Q. Do you hold any office in Mexico; and, if so, what office do you hold?

A. I am archievaro—keeper of the archives of the treasurer general.

Q. Of what State?

A. State of Sonora.

40 Q. At what place are those archives located?

A. In the department of the treasury; in three rooms.

Q. In what city?

A. In Hermosillo.

Q. How long have you been keeper of the archives?

A. It is going on eight years that I am archivero.

Q. Do you know who preceded you as keeper of the archives?

A. Yes, sir.

Q. Who?

A. Luis Mendez.

Q. Who preceded him, if you know?

A. I do not of my own personal knowledge, but I know who was before him.

Q. From the records in the office?

A. No.

Q. How long have the archives been at Hermosillo?

A. I can't say, but it must have been very many years, for they have been eight years in my charge.

Q. Do you know where they were prior to their being brought to Hermosillo or whether they have always been at Hermosillo?

A. They were at Ures before being at Hermosillo.

Q. Were they at any time at Guaymas that you know of?

A. I do not know.

Q. What are your duties as keeper of those archives?

A. To keep all documents that are in the treasury department under my own responsibility.

Q. Are you in the exclusive charge of those archives?

A. I am the keeper. I am appointed—

Q. By whom are you appointed?

41 A. By the treasurer general, in conjunction with the governor of the State.

Q. Are not the archives under the general control and supervision of the treasurer general?

A. How do you mean by the control? The archives are exclusively under my control. When the treasurer needs any documents he asks me for them.

Q. Are you acquainted with the manner of making grants of land in the State of Sonora?

A. I am acquainted, for the reason that I have seen all the titles that are under my charge.

Q. Will you please state in a general way the manner of making grants of land in Sonora?

By Mr. REYNOLDS: The law provides for the manner in which grants are to be made, and the witness is not competent for that purpose.

By Mr. HENY: I am only trying to get at the actual manner in which it was done. There are one or two points I want to develop in regard to keeping the records—as to how it is actually done; as to how the expedientes are made up—the exact manner in which they are made up in actual practice.

By the COURT: We probably have a pretty clear understanding of what the actual practice is, Mr. Heney, arrived at from other cases that have been tried before us, and it is not necessary to cumber the record with that, so far as this court is concerned.

42 Q. Mr. Rochin, do you know a book in your office that is known by the name of Toma de Razon?

A. I know it.

Q. What is the character of that book?

A. It has the entry in it of record of the granting of titles by the treasurer general.

Q. Describe the book known as the Toma de Razon, if there is one in that office, as to how the book is actually manufactured—made up—and as to its character and general appearance.

A. It is a book that has a white parchment cover. It is written on sealed paper. It is paged (foliado), and in it appear year by year the titles that were issued by the treasury.

Q. Was the book originally of the same size it is now, or is it made up leaf by leaf by leaves being added to it?

A. No; it is the same.

Q. How are the leaves put together?

A. They are sewed.

Q. For what years does the book of Toma de Razon exist in your office, if you know?

A. I do not remember well, but here are other gentlemen, as Mr. Flipper and others, who know the book as well as myself, and they might probably remember.

Q. Does it cover all the years in which grants were made in Sonora?

A. Not all of the years; of some of the years.

Q. Are there any grants that you know of, the expedientes of which are among the archives in your office, that are not noted in the Toma de Razon?

43 Mr. REYNOLDS: Objected to as incompetent and immaterial.

Objection overruled.

A. I do know.

Q. Many?

A. There are many.

Q. Are any of those grants, to your knowledge, now recognized as valid by the Mexican government?

By Mr. REYNOLDS: That is objected to on the ground that the government of Mexico can recognize what it pleases, good or bad, without binding the United States.

Objection overruled.

A. I do know of them.

(At the request of counsel for petitioner the witness retired from the court-room to procure certain original documents in his custody which he had not brought with him to the court-room.)

Q. Mr. Rochin, have you with you any papers ?

A. I have.

Q. Will you produce them ?

A. (Witness produced papers and handed them to counsel.)

Q. (Exhibiting paper.) Where did this paper which you now exhibit come from—where did you get it ?

A. In the archives.

Q. The archives that are under your charge in Sonora ?

A. Yes, sir.

Q. Do you know the handwriting of the signature which is on it ?

A. I do.

44 Q. Whose signature is it ?

A. Of the governor that was of Sonora, Don Ignacio Pisquera.

Q. Do you know if he was the governor at the date that this paper purports to be ?

A. 1857. The thing is shown conclusively by that seal (indicating seal on paper).

Q. Is this paper a part of the archives in your possession ?

A. Yes, sir ; it is.

Q. Do you know the handwriting of the body of the paper ? Have you ever seen it before ?

A. I do not.

By Mr. HENNEY : We will now offer this paper in evidence, together with a translation.

I may aid the court by a short statement of what I intend to prove. I desire to show that Governor Pisquera appointed an examiner of the treasurer general's office by the name of Gutierrez, and this paper is the appointment, and I will show the law authorizing the governor to appoint examiners and suspend officers, etc., and that Gutierrez took possession of the office and suspended the contador that was in possession of the office at the time, the treasurer general at that time being occupied with other particular duties in the collection of customs ; that he so suspended Arviso, who was the first clerk, and, under the law, then became the acting treasurer general, and was also so appointed by Gutierrez, and was so reported to Governor Pisquera pending the investigation. I will further show

45 that the investigation was made and Arviso was removed from the office and Tapia remained in the office ; that while Gutierrez was examiner there he called for certain expedientes (among them the Calabasas and Guebabi), by writing, requesting that they be turned over, addressed to Arviso, and that communication, signed also by Tapia, was given to Arviso, who was contador and acting treasurer general, as receipt for those papers. We propose to show how the expediente of Calabasas and Guebabi got out of the archives, for as a matter of fact it is not there.

By the COURT : Do you propose to file with us the original paper or a copy ?

By Mr. HENNEY : A certified copy ; but I want your honors to inspect the originals ; he cannot part with them.

A copy of said paper certified to by said Bartolomeo Rochin was thereupon offered in evidence by counsel for petitioners and marked Exhibit "1."

A translation thereof was also offered and filed with the clerk.

Q. Now, give me the next in date.

A. (Witness selected a paper and handed same to counsel.)

Q. Where did you get this paper which you now hand to me?

A. It is from the archives under my charge.

Q. Do you know the signature upon that paper?

A. I know it because there are other signatures here also.

46 Q. Whose signature is it?

A. It is the signature of Toribio Gutierrez. He was visitor of the departmental treasury on the first of January of the year 1857.

Q. Do you know whose handwriting the body of this paper is?

A. I do not.

Q. Have you ever seen that handwriting in any of the papers in the office?

A. Yes, sir; I have.

Q. Is that handwriting found in many other papers in the office?

A. It is the same handwriting.

Q. And you would say, then, it was the handwriting of one of the clerks in the office?

A. Why, certainly it would be.

By Mr. HENY: We will offer for the inspection of the court this original paper, and we offer in evidence a certified copy of it. It is dated Ures, February 4, 1857.

The certified copy referred to was marked Exhibit "2," being certified by Bartolomeo Rochin, and a translation thereof was filed with the clerk.

Q. Where did you get the three papers which I now hold in my hand and which you produced here?

A. From the archives under my charge.

Q. Do you know the signature upon this large paper?

A. It is the same signature of Don Toribio Gutierrez.

Q. What does the date of this paper purport to be?

A. March 7th, 1857.

Said document was thereupon offered to the court for its inspection.

47 A certified copy of said document was thereupon offered in evidence and marked Exhibit 3 and a translation thereof filed with the clerk.

Q. (Exhibiting another paper.) What is this paper?

A. These are minutes.

Q. Do you know the handwriting upon this paper which I now show you?

A. I do not know it, but I know the handwriting is the handwriting of many other papers in the treasurer general's office.

Q. Would you say, then, that was written by a clerk in the treasurer general's office?

A. It is shown by the endorsement on top of it.

Q. To be such?

A. To be such.

Q. The date of this paper purports to be what?

A. Ures, January 21, 1857.

Said paper was passed to the court for its inspection.

A certified copy of it was thereupon marked Exhibit "4" and a translation thereof filed with the clerk.

Q. (Exhibiting another paper.) Examine the paper which I now hand you and state where you got it.

A. From the archives of the treasury under my charge.

Q. What is the date of that paper?

A. January 21, 1857.

Q. And the handwriting of that, is that the same as other handwritings of the treasurer general's office?

A. It is the same.

By Mr. HENRY: We offer that for the inspection of the court and file a certified copy thereof.

Said copy was marked Exhibit Number "5" and a translation thereof filed with the clerk.

Q. (Exhibiting another paper.) What is this paper which I now exhibit, and where did you get it?

48 A. I obtained it from the archives of the Treasury.

Q. That is part of the archives under your charge?

A. Yes, sir.

Q. What is the date of that paper?

A. Ures, March 21, 1857.

Q. Do you know the signature?

A. It is the signature of Don Igancio Pesquera, who was governor of the State in that year.

By Mr. HENRY: I submit this original for the inspection of the court and offer a certified copy thereof with translation.

Said certified copy was marked Exhibit "6."

Q. (Exhibiting another paper.) I will ask you to examine the certified copy of photographs which are filed as of October 13, 1894, by James H. Reeder, clerk; R. L. Long, deputy clerk, in case No. 8—Wm. Faxon, Jr., trustee, *versus* The United States—and state whether you have seen the original of the photograph which is marked "N," the first photograph in this paper.

A. I have seen it. I have it in my archives.

Q. Is it part of your archives?

A. It is.

Q. Do you know the signature upon that paper?

A. I know it.

Q. Whose signature is it?

A. It is the signature of Don Eufemia Tapia.

Q. Is that this gentleman sitting over here (indicating a person in the court-room)?

A. He is the same one.

Q. Do you know the handwriting of the body of that instrument?

A. I do not. There are many papers of the same handwriting, but I don't know who wrote it.

Q. Many papers of the same handwriting in your archives?

A. Yes, sir; and Mr. Tapia, who is now here present, must know who wrote that.

Q. Now, examine the next photograph, marked "P," and
49 state whether you ever saw the original of that photograph.

A. The original is in the archives under my charge.

Q. Is it part of the archives of the State of Sonora?

A. It is.

Q. Do you know the signature upon that paper?

A. This is no signature; it is only the date.

Q. Do you know the handwriting?

A. I do not know. I know the form of the letter because I have seen others like it.

Q. There are other handwritings exactly the same on other papers like it in your office?

A. Yes, sir.

Q. Examine the next photograph, with the figures "1833" on top, and state whether you ever saw the original of that.

A. I have it in the archives under my charge.

Q. And is that part of the archives of the State of Sonora?

A. It is.

Q. Is there any signature to that paper?

A. It has a rubric.

Q. Do you know whose rubrica that is?

A. I suppose it is the rubrica of the one who has signed that, whose name is Milla.

Q. Are there any other rubrics like that in your office on official papers?

A. Yes; there are many of Don Jose Justo Milla. He was treasurer for many years.

Q. Examine the next photograph, marked with a "X" in ink upon the cloth, and state whether you ever saw the original of that paper.

A. The original is in the archives under my charge.

Q. Is it part of the archives of the State of Sonora?

A. It is.

Q. Do you know that handwriting?

A. It is. This is the same one as number two, marked "P."
(Certified copy offered in evidence, Ex. "7.")

Q. Do you know that signature on this first page, on the face of this certificate attached to these photographs?

50 A. It is the signature of the treasurer general, Don Victor Aguilar, and the document is written by myself.

By Mr. HENEY: We will offer this certified copy in evidence. It has been filed.

Said document was thereupon marked Exhibit "7."

By Mr. REYNOLDS: I wish to enter an objection to the insertion of the word "State." I refer to the translation of this document marked "P," and not to the Spanish document itself.

Q. Mr. Rochin, have you ever made a search of your office for the expediente of the Calabasas and Tumacacori grant?

A. I have.

Q. Did you find it?

A. No; I did not.

Q. To what extent have you searched?

A. As I was the first one to form the land archives, which I was first ordered to do by the government, I did not find it there.

Q. What do you mean by "forming the land archives"?

A. Because when I received the archives the land titles were in complete disorder and complete abandonment.

Q. Where were they at that time?

A. They were in the office of the treasurer general.

Q. Do you know the cause of that disorder?

A. The cause is that when the archive was changed from Ures to Hermosillo that archive was in the greatest disorder.

Q. And it wasn't straightened out till you took charge of them?

A. Yes; that is the first thing that I ever did by order of the government to begin my work. I began by arranging the land titles.

Q. And in doing that was it necessary for you to go through all the expedientes in the office?

A. I wrote a statement, which has been published and which I have made a present of to several members of the court, that went Hermosillo.

51 Q. I don't know what that statement was and I would like to get it into the record. Did you go through all of the expedientes at that time?

A. How is it possible that I should not have examined them if I myself formed the archives.

Q. Then you did?

A. Yes; I examined them all to see which ones were good and which ones were not, which ones were torn and which ones were not torn.

By Mr. REYNOLDS (to the interpreter): By "good" does he mean in good condition or ones that were valid?

By the INTERPRETER: I don't know; he simply says good.

By the WITNESS: When I made that statement I had to go one by one over all the titles which were numbered, because all the titles are numbered, to find out which ones were complete and which ones were not complete, and the proof that I did go all over the titles is that in that statement made by me it appears what titles were issued and what titles were not issued, according to the state (condition) in which the title papers were issued.

Q. (To the interpreter :) Didn't he say that he made a sketch or description of the titles ?

By the INTERPRETER: No ; he said " reseña," and by that I understand he meant a statement.

Q. Ask him if he did not make a sketch or description of the titles in that statement ?

A. Yes ; in the statement, at the heading of each title, I inserted a notice saying that I, as keeper of the archives, would issue titles for the *some* of \$150 per title.

Q. In making this examination as to whether titles were complete or not, how did you determine whether a title was complete or not ?

A. When there are pages wanting in a book it is possible to know whether a book is complete or not. Those documents that
52 did not contained the statements to the very last, even to the payment of the fees, were not complete, as will appear from the statement that I made.

Q. Then, in determining the question as to whether the title was complete, you examined the expediente and not the book of Toma de Razon, did you ?

A. No ; I did not. Why should I examine the Toma de Razon ? I was making up my own archives.

Q. Does the Toma de Razon contain a record or is it merely an index of the grants ?

A. It is a record, kept there in a few words, stating the date on which a title was issued to such and such a person and the date upon which he paid fees and the amount of fees ; and that is the Toma de Razon.

Q. From the Toma de Razon can you tell what particular land was sold and separated from the public domain ; does it describe the land ?

A. The Toma de Razon was nothing but a statement of the time when the title was issued to such a person and of the amount of land, and one-half of the rubric was attached to the paper ; and that is the Toma de Razon.

Q. This book of Toma de Razon does not contain a description of the land except by the name of the grant, does it ?

A. That is the only one ; the only description.

Q. What do you mean by issuing title for \$150.00 ; do you mean you would give a certified copy of the expediente ?

A. Yes. It is natural I do not refer to the original, because I am authorized to issue certified copies.

Q. Did you know this man Arviso, who is mentioned as the contador in the papers which were just offered in evidence—these photographic copies ?

A. No, sir ; I did not know him.

Q. Do you know whether he is dead or alive ?

53 A. I do not know ; I think he is dead.

Q. Do you know Gutierrez ?

A. I did not know him.

Q. Do you know whether he is dead or alive ?

A. I know that he is dead.

Q. Do you know whether or not it is the practice to enter in the Toma de Razon resales of land where title had once issued and the land was denounced and resold?

By Mr. REYNOLDS: I object to his proving the practice; it cannot vary the law.

By Mr. HENEY: No; but all I am trying to do is to account for the absence of a Toma de Razon entry.

Objection overruled.

Q. We will limit it to resales of these secular lands of the clergy—temporalities?

A. I haven't seen any.

Q. Do you mean you haven't seen any resales entered in the Toma de Razon?

A. I do not know of any, because I have no statistics in my office to show that—not matters in my office to show that.

Q. To show either way, whether they are or are not?

A. No.

Q. Do you know of any other resales of temporalities where the expedientes appear in your office?

A. I do not.

Q. What constitutes the record of a grant, the expediente or the entry in the Toma de Razon?

By Mr. REYNOLDS: Objected to as calling for a conclusion of law.

Objection sustained.

Q. Do you know a book called "Cargo y Data"?

A. I know them.

Q. What is that book?

A. It is a book kept of the amounts that were brought in and paid out from the treasury. "Cargo," come in; "Data,"
54 issued out—the amounts.

Q. Is the book of Cargo y Data for the year 1844 now in your office; does it now exist in the archives?

A. It is not.

Q. I mean the one in which the receipts from the sales of lands were entered.

A. It is not in existence.

Q. Do you know what become of it?

A. I do not.

Q. Is that book missing for any other years?

A. There are other books of "Cargo y Data" for other years lost also. One is for the year 1833, and I was ordered by the secretary of state to hunt up some law and I found the book of Cargo y Data for the year 1833 and also other documents which I was ordered to bring up at my archives.

Q. Where did you find those?

A. In the archives of the congress of the State legislature.

Q. Do you know how it got there?

A. I do not.

Q. Did you find any other books of Cargo y Data there belonging to your archives?

A. I did; for the year 1850.

Q. Did you find the year 1844?

A. I said that I did not.

Cross-examination.

By Mr. REYNOLDS:

Q. Did you find a Cargo y Data for the year 1838?

A. No.

Q. Did not your produce it on the trial of the Algodones case about three years ago?

A. No, sir; I did not; the book of Cargo y Data of the year 1838 I did not present.

Q. Would it have been in your custody if it had been there?

A. Certainly.

Q. The book called Toma de Razon for the year 1844 is there, is it not?

A. It is not in existence.

55 Q. The book, I mean. I don't mean the record of this grant. The book showing the minute or records of grants from 1831 to 1849. Aren't they in your office?

A. I don't remember the date, but if Mr. Flipper or yourself will remind me of the dates I will tell you whether they are the dates exactly.

Q. From 1831 down to 1849 do not the books of Toma de Razon exist in your office, running from the year 1831 to 1849?

A. I have said that there is no other book except the book which the gentlemen already know, or with which the gentlemen are already acquainted, and another little pamphlet of Don Miguel Riesgo, in which also there are five or six Tomas de Razon; and that is all there.

Q. Don't that book cover the date of 1844?

A. Which book do you refer to?

Q. I mean the book of Toma de Razon. I don't want the contents. I am simply asking you about the book.

A. I don't know the date. I can't remember the date when it begins and ends, but Mr. Flipper has a note of that, and if he will remind me of it I will state.

Q. The book covered with parchment which you testified to a moment ago as being the book which contained the Toma de Razon was shown to you by Mr. Flipper, wasn't it?

A. It is.

Q. And that book contains entries of Toma de Razon from 1831 to 1849?

A. I say that I do not remember the date. I do not remember those dates now, and if Mr. Flipper will remind me of it I will state whether it is so or not. I do not want to make any statement that

I may have to contradict afterwards from documents in my possession.

By Mr. HENY: We will admit that it does; we know
56 that to be the fact.

Q. (Exhibiting a book.) Mr. Rochin, I show you a book or a pamphlet and ask you if that is the compilation that you testified awhile ago as having been made from the records in your office by you.

A. That is the same one.

Q. Now, in compiling that you simply took the papers that were on file in your office and from them made that up? I refer to papers relating to land titles.

A. Yes (referring to an entry in the book); that is one of the particular documents that are incomplete.

Q. You made this up from the expedientes that you found on file in the office?

A. I made this statement from the expedientes that were delivered to me in the archives.

Q. If you found an expediente containing all of the proceedings down to and including the payment of the money, then you considered it a complete expediente, didn't you, and so entered it in your book?

A. Yes; and as upon these expedientes there was a note made, noting the fact of the date on which the title was issued, I also made up a statement in that compilation, stating that title was issued for such and such land on such and such date.

Q. You did not go to the book containing the Toma de Razons to find out whether or not that was true, did you?

A. No; I did not. The titles were sufficient for me, because amongst us the Toma de Razon wasn't necessary.

Q. The paper containing the final grant was not attached to the expediente, was it? It terminated usually with the certificate of the payment of the money, didn't it?

A. In that case if it did not contain the payment of the money it would not be complete.

57 Q. He did not understand the question. That did not have attached to it or contain the final grant which was made after the payment of the purchase-money, did it?

A. The complete expedientes that I have mentioned there were those that had all the requirements of the law for these titles, and had besides the payment of the money, the last sales, and that a note should be made in that expediente in the matrix of it that a title for the land had been issued. That is a complete expediente.

Q. That title that has been issued was not attached to it, was it?

A. To the expediente, do you mean?

Q. Any expediente.

A. The titles were made first by making a statement or by getting information whether the man asking for the land had sufficient property to settle the grant, and after that all the regular proceedings were had before the general treasury or the departmental treas-

ury, the last sales were made, the fees were paid in, and a copy of the title was given to the interested party. That was a complete title.

Q. Now, Mr. Interpreter, ask him what was done with the document that was issued after the expediente—the last instrument that was executed after the payment of the money. I do not mean the copy of the expediente, but I mean the last document after the payment of the purchase-money.

A. On the back side of the page on which the payment of fees was stated there was a statement made that the title had been issued to the party.

Q. What become of that title that was issued?

A. The copy was given to the interested parties, and the matrix or copy of it remained in the archives.

Q. The expediente remained on file in the archives, a copy of it was made and to that was attached the instrument that was
58 executed by the granting officer after the payment of the money?

A. I do not understand the question in order to answer it well.

By Mr. HENNEY: The granting clause was sometimes put on the matrix and left in the archives.

By the COURT: But that was not the practice, and in the absence of proof that it was there the court must presume that it was not there.

Q. Do you know when Mendoza died?

A. I do not; I do not remember.

Redirect examination:

Q. Do you know whether the Calabasas and Tumacacori grant is mentioned in the Toma de Razons of any other grants that are in this book that you speak of with the parchment cover on?

A. I don't know any.

By Mr. REYNOLDS: I have no objection to letting the record show that there may be other grants of which Toma de Razons were made referring to the Tumacacori, Calab-sas, and Guababi grants instituted in 1806 and concluded in 1807. If that is the purpose I will make that admission.

By Mr. HENNEY: Perhaps you will consent to a certified copy of the Toma de Razon in the Nogales case being admitted in this case.

By Mr. REYNOLDS: Certainly.

By Mr. HENNEY: We will consider it in evidence then.

Recess until 2 o'clock.

Q. When did you make this statement of these grants, Mr. Rochin?

A. You mean the "reseña," the statement?

59 Q. Yes.

A. In the year 1888 I received the archives, and from that date up to the year 1890 I made the statement that is offered here.

Q. In order to make this, did you examine all the papers in the

office of every kind and nature or simply the expedientes as they appeared to be?

A. That statement contains only the expedientes of titles to lands existing in the office of the treasurer general of the State of Sonora.

Q. What I mean is, did you examine these other papers, such as these papers that were put in evidence this morning and which you identified in making out this statement?

A. Those papers belonged to the papers of the year 1857; they have the date of 1857, and I have to go back to those papers to compare the legality of the papers that I mention in the statement.

Q. Did you know at the time you made up this book that those papers that you identified here this morning were in existence in your office?

A. After I got through forming this statement I went through the other papers in order to arrange all the other papers belonging to the general archives, and they were placed in a big book, which the gentl-men here have seen, and those papers relating to land matters I looked for them in the corresponding papers whenever I have had occasion to need them.

Q. At the time you made that out, did you know of those particular papers being in the office—the particular papers of which I have shown you photograph copies?

A. Those papers I found after I made the statement. They were in loose leaves, loose pages, which loose pages are contained in five boxes in my office.

Q. From whom did you receive those boxes?

60 A. I did not obtain the boxes, as I said before. Among all the papers from which I obtained these expedientes were those loose pages.

Q. And were they in the archives when you took possession of them when you were first appointed?

A. Yes, sir.

Q. At the time you were issuing those certified copies of expedientes for \$150, if a party produced a receipt of the treasurer general showing the payment of the money and the expediente appeared to be complete down to that point, but there was no Toma de Razon entry, did you issue a certified copy of the title to him upon that receipt?

A. I don't understand that question. At the time when I charged \$150 for issuing testimonios of original titles found in the office of the treasurer general, that amount is charges that I am entitled to on account of my work and expenses incurred as for attaching seals and stamps and other work contained in connection with this issuance of testimonios.

Q. If an expediente appeared to be complete, except there was no entry either on the expediente or the Toma de Razon that title had been issued to a party, but the party produced the receipt showing the payment of money on that title, did you issue a testimonio to him upon that receipt? If the expediente was complete up to that point, except it showed no notice on it that title had been issued?

A. The payment of the fees, do you mean?

Q. For the land. The fees that were payable upon payment being made—the purchase price.

— I have nothing to do with the sale of lands. I only have to do with keeping the titles that exist in the archives of the treasurer general.

By Mr. REYNOLDS:

Q. Did not you say "copy of the matrix," instead of "titles as they appeared," etc.?

A. Yes, sir; I did.

61 By Mr. HENEY: You hav'n't made him understand my question yet.

By Mr. HENEY:

Q. The testimonio delivered to the party does not contain a full recital of all in the expediente. It is a mere synopsis of what was done, wasn't it?

A. It is a complete copy in full of everything contained in the original expediente or matrix.

Q. It does not contain the whole of the returns signed by the surveyors, does it?

A. We cannot understand ourselves fully, and I am going to explain to you fully what is a testimonio issued there.

Q. Very well.

A. A testimonio is a full, complete, and faithful copy of a document, without omitting any portions of it.

Q. Of every document that is contained in the expediente?

A. An expediente contains everything. There is the petition presented by the parties asking for the land, and the report made that the parties asking for the land are able to settle it or take charge of it, and then the granting clause—first the survey and the payment of the fees, and at the very last of it there is a note made that the title has been issued; and a copy made of that expediente is the testimonio.

Q. Do you mean to say it contains the publication of the notice of sale in full—the testimonio?

A. Certainly—certainly does. If it is a good testimonio, it contains all the sales, the notices, and everything else.

Q. Hav'n't you seen a great many genuine testimonios that do not contain everything that is in the expediente, but that is a brief statement of what is in the expedientes?

A. Yes; there are some, because in some of them there were no notices for sale on account of the ancient possession held in the lands.

62 By Mr. HENEY: I wish to identify certain signatures to original documents, but I will not put them in evidence at this time.

Q. (Producing document and handing same to witness.) Examine that paper.

A. (Witness did so.)

Q. Examine the signatures and the seals.

A. (Witness did so.)

Q. Whose signature is that, if you know?

A. Alejo Garcia Conde.

By Mr. HENEY: This purports to be the titulo of 1807.

Q. Are you well acquainted with that signature?

A. I know it.

Q. How do you know it?

A. Because there are many signatures in the treasurer general's office of Alejo Garcia Conde.

Q. Do you know the rubrica?

A. The rubrica is just like the rubrica I have seen in the other documents in the office.

Q. Signed by him?

A. That is like the one I have seen in other expedientes signed by him, as well as the handwriting of Mendoza. I think that this man is the brother of José Maria Mendoza.

Q. (Indicating.) What signature is that?

A. Ignacio Luis Gonzales. I have seen few of those signatures of this man Gonzales.

Q. In the archives?

A. Yes, sir.

Q. Is that the same?

— I can't state exactly, because I have seen them very few times—very seldom.

Q. What is your opinion as to Gonzales' signature there?

A. I have said that I have seen very little of it, and I can't state positively whether it is or not.

Q. No; but state your opinion to the best of your judgment.

By Mr. REYNOLDS: Objected to because the witness has not been qualified.

63 A. I say that it seems to me so, but I can't state positively. I can swear that the signature of Leon Herreros is his. I can say that because I have many documents signed by him, and I have particular letters also written by him.

Q. And whose is this next signature?

A. Don Herreros'. I have letters written by him, and documents also.

Q. What is this signature?

A. It seems to me I have seen it there also. I do not know the others.

Q. Have you ever seen this writing in the body of the instrument, or similar handwriting?

A. It is the same handwriting of the whole expediente, and it is the handwriting of this man Mendoza, for the reason that I have very many papers of this kind, with these Spanish seals, and also

written in the handwriting—this same style—and I say it is the handwriting of — man Mendoza.

Q. What office did he hold then ?

A. When ?

Q. 1807.

A. He was a clerk, according to what I saw from the documents written by him.

Q. What office had Garcia Conde held ?

A. It is stated right here he was intendent of the province of Sonora and Sinaloa.

Q. Now examine this one (exhibiting another paper). Do you know whose signature that is ?

A. That is the signature of Don Jose Maria Mendoza.

Q. Do you know what office he occupied in 1844 ?

A. I don't remember.

Q. Whose signature is that ?

A. Don Ignacio Lopez, who was departmental treasurer.

Q. In 1844 ?

A. In 1844.

Q. And whose signature is this ?

A. José Diego Labandera.

Q. You know that signature, do you ?

A. I have seen his signature and his rubricas.

64 By Mr. HENY : I wish it stated that the paper about which he is now testifying purports to be the titulo of 1844 in this case.

Q. Do you know that seal ?

A. Yes, sir ; I know the seal well.

Q. What is it ?

A. The seal of the treasurer's office.

Q. What treasurer's office ?

A. The office of the treasurer general of the State, and also of the departmental treasury at that time.

Q. Of the State of Sonora ?

A. Also this blank space here is filled up by the word "departmental." They put it in with a pen.

Q. Department of Sonora ?

A. Yes, sir ; in the department of Sonora.

Q. Examine the leaves of that paper and state whether or not they are official paper issued for those years.

A. It is stated right here that it is seal second '45, and that is the official paper for the years 1844 and 1845, and I have great quantities of this paper myself in the office.

Q. Of that year ?

A. Yes ; and of other years, too.

Q. You mean paper that has writing on, don't you ?

A. Yes, sir.

Q. You haven't any blank paper of that kind ?

A. I don't remember. A. I think the first one only contained the seal and the other one did not contain it.

Q. Do you mean the original titulo only contained the seal?

A. I refer to this kind of paper. It seems to me that the first leaf only had the seal marked here (indicating), and the other one did not contain it; like this one here.

Q. Yes; it is a double leaf. Have you ever seen the handwriting in the body of that instrument?

A. Yes, sir; I have.

Q. Where?

A. In the documents that I keep there in the treasury.

Q. Are there many documents having that handwriting about that year?

65 A. Many. I have papers from the year 1700; over a century.

Q. But the papers in 1844 containing this handwriting are there; other original expedientes there on file?

A. Yes; there are many of this handwriting.

Recross-examination :

Q. Mr. Rochin, in all official documents, if the leaf is not on stamped paper the leaf is legalized, is it not, by making an endorsement of its legalization on top?

A. When there was some sealed paper of the preceding years there was a law by which those papers could be habilitated for subsequent years.

Q. But if you used a blank sheet without any seal on it, didn't they usually habilitate it?

A. In those times, from what I see on papers in the office, they were papers that contained the seal only on the first page and the other page did not contain any, and those seals cost what was stated on the face of the seal that they were valued at.

Q. I know; but I ask you if each leaf of the document where it did not appear to be sealed itself was not habilitated and legalized the same as if the seal had been put on it.

A. No; because it had already been habilitated by the seal contained on the first page.

Q. The first document that was shown you of 1807, on which you identified the signature of Conde, does that purport to be the original or a testimonio?

A. No; that is the testimonio.

Q. Now, the one of 1844, which you have identified the last time, is that an original or is it a testimonio?

By Mr. HENEX: I object to the use of this expression as misleading, because the testimonio is itself an original.

66 A. That is the testimonio; it is not the matrix; it is the title given to him; it is exactly of the same character as the other one.

Q. Now, Mr. Rochin, in the examination of the expedientes in your office, do you ever find attached to them the preamble and final grant?

A. That in the matrix or original title is not to be found. It was a thing attached only to the testimonio.

By Mr. HENEY: I do not want to take up the time of the court, if the court understands this the same way I do; otherwise I would like to ask a few questions. The testimonio is an original paper in the sense that it is signed by the granting officer and delivered to the party.

By the COURT: The grant attached to it is signed by the granting officer?

By Mr. HENEY: I mean that it is an original paper. The expediente is a history of the proceedings as they occurred, left in the archives; then the granting officer recites what has been done, taking them from the expediente, and adds the granting clause and signs it. It is an original paper from top to bottom. It is what is called the second original.

By the COURT: It is what is delivered to the party as evidence of his title; we understand that.

By Mr. REYNOLDS: The testimonio is a copy of the expediente or matrix, and to that is attached the original patent or grant signed by the granting officer.

By Mr. HENEY: But what I am trying to get at is that the testimonio is an original paper. It contains some things that the expediente contains and some other things as well, but it is an original paper signed by the granting officer.

By the COURT: We understand the effect of it.

67 EUFEMIO TAPIA, a witness called and sworn on behalf of the aforesaid petitioners, testified through the medium of the official interpreter of this court as follows:

Direct examination.

By Mr. HENEY:

Q. Where do you reside?

A. In Hermosillo, State of Sonora.

Q. How old are you?

A. 71 years old.

Q. Are you a Mexican citizen?

A. I am.

Q. And have you resided all your life in Mexico?

A. I have also lived in the United States—in Tucson.

Q. Where were you living in 1857?

A. I was at Ures yet.

Q. What office, if any, did you hold under the Mexican government at that time?

A. I was chief clerk of the treasury of the State.

Q. (Exhibiting document.) Examine the first photograph in these certified copies of photographs marked filed by the clerk October 13, 1894, R. L. Long, deputy, in the case of Faxon, trustee, vs. The United States, the first photograph marked "N," and state whose signature is signed to that.

A. That is mine; that is attached to a provisional communication making me for some days an officer—a provisional treasurer for some days—and that is the character in which I have signed that.

Q. Did you sign the original paper of which this purports to be a photograph?

A. Yes, sir.

Q. Have you seen that paper since you signed it; and, if so, where?

68 A. I have not seen it since I signed it.

Q. When did you sign it, the date it purports?

A. The date is there.

Q. Did you sign it on the date which it bears?

A. It is the 8th of February of the year 1857.

Q. Whose signature is this (indicating) on same paper?

A. This is the signature of Gutierrez, the appointed visitor or examiner of the treasury.

Q. Examine the second of these certified photographic copies, which is marked "P," and state whether you ever saw the original of that.

A. No, sir; I haven't; I haven't seen the original.

Q. Examine the third. Do you know that signature on the document or photograph marked "1883"?

A. It seems to me it is the signature of Don José Maria Arviso. He was an employee of the extinguished treasury.

Q. Who was Milla?

A. I don't remember who he was.

Q. Examine the fourth photograph.

A. I know nothing about that; I have known nothing about that.

Q. Do you know the handwriting of the second one shown you?

A. It seems to me it is the same one as on this (the third).

Q. And whose signature is that?

A. Don Jose Maria Arviso.

Q. You may state the history of this transaction as you recollect it.

Objected to by counsel for the Government on the ground that the correspondence ought to show for itself.

69 By the COURT: We will hear it and see what it discloses. It *may* enlighten us on the subject.

By the INTERPRETER: The witness asks me if he has been asked if he had seen the original of that second photograph.

Q. Well, has he seen the original?

A. He says he has not. There are some things wanting in that expediente; that is not all of it. He refers to that copy you have right there.

Q. That is not all of the correspondence, he means?

A. No; there are some things wanting there.

Q. Well, never mind that now. State the facts in regard to this transaction as you recollect them.

By Mr. REYNOLDS: That is objected to for the reason that the correspondence ought to show for itself without any explanation being added to it.

By the COURT: You may ask it.

A. The first communication presented to me there was brought about by a communication from the government asking for information with regard to these titles.

Q. Well, what did you do, if anything?

A. Let me see the documents.

Q. (Counsel handed documents to witness.)

A. This (indicating) is the communication by which or through which I asked for the titles in order to enable me to report.

Q. Did you receive at that time or did you have in your hands the expediente of the Calabasas and Tumacacori land grant?

A. Yes; except what is stated here in this other communication, the second one.

Q. I am asking you about the Calabasas and Tumacacori grant. I don't care about the other.

A. Yes; it is to what I refer in this communication.

Q. Did you examine that expediente?

A. You mean the expediente or the title?

Q. I mean the expediente of the Calabasas and Tumacacori grant.

A. That is not an expediente; it was a title to the lands, which was examined in order to get this report, and that is wanting in this document here.

Q. Where did you get that title?

A. From the tesessario de liquidacion.

Q. Do you know the difference between a titulo and an expediente; and, if so, what is it? I think he is making a mistake, if the court please.

A. An expediente is one in which there unites or in which several points combine to make one single document.

Q. And what is a titulo?

A. A titulo is a document that recites the property belongs to the individual; it may be in one, two, or three leaves.

Q. These papers that you examined, were they given to you from the archives of the treasurer general's office of the State or department, whichever it was, of Sonora at that time?

A. From that office which I have mentioned here. They were sent from that office up to me, as is stated in this communication (referring to 3rd photographic exhibit).

Q. What was Gutierrez doing there?

A. He was the examiner; he was our superior.

Q. He was making the examination and report, wasn't he?

A. I gave the report. The report was asked of me by the governor, and that report is wanting here in this expediente.

Q. Was not Gutierrez sent there to examine and report on that office?

A. I don't know whether he had any communication from the government to report in this matter.

Q. If Gutierrez came there to inspect as inspector, didn't he have to make a report to the governor?

A. I don't know; probably he did have to give that report. I didn't know it, but I gave the report that was asked of me.

Q. Is your recollection definite now as to whether that report of yours was not made at another time?

A. No.

Q. It is not definite?

A. I haven't before me the report that I made, for the reason that it is not here.

Q. Did you know Arviso?

A. I did.

Q. What office did he occupy at that time?

A. He stated what office he had in this communication here (referring to photographic copy marked "P").

Q. Well, what is it?

A. He was contador of the treasury of liquidacion.

Q. Is Arviso living now?

A. He is dead.

72 Q. Now, these papers that were sent to you to examine—this title—were they the original papers that were on file there in the archives?

Objected to by counsel for the Government as a cross-examination of his own witness and as calling for a categorical answer.

By the COURT: It is leading, but it seems difficult to get the witness to comprehend. The objection is overruled.

A. Yes, sir. After I made that report the papers that had been sent to me were returned to the place from which they had been sent.

Cross-examination.

By Mr. REYNOLDS:

Q. (Exhibiting document). Look at this paper and see if that is the paper that was sent to you in 1857. Look it all through and see if you do not recognize that. Look at the last part particularly. (Titulo of 1844 handed witness.)

A. If I am not mistaken that is the same one.

Q. At the time, in 1857, when these papers were called for by the correspondence which you have identified were you in any way connected with the treasury department of the department of Sonora?

A. I was, as is indicated there. I was chief clerk.

Q. Were you afterwards appointed acting auditor or treasurer general?

A. Yes; as it is stated there.

Q. And you had occasion as acting treasurer general to handle a great many documents, didn't you?

73 A. I don't know whether the papers that I had to examine were many or not.

Q. The occasion of your making the examination of these titles in 1857 was on account of the difficulty with Arviso and because his bond as treasurer general was considered no good?

A. Mr. Arviso had nothing to do with that matter, except to send to me the expedientes that were asked for in that communication.

Q. You were not appointed to investigate his accounts?

A. No, sir.

Q. Was not Mr. Gutierrez appointed to investigate Arviso and his management of the office and his accounts?

A. I have said that he was the visitor or examiner of the treasury.

Q. He examined it generally?

A. Yes, sir.

Q. And that is how these papers happened to be called for by this correspondence which you have identified here?

A. Yes, sir.

Q. That is all.

A. For the report that I say is wanting in that paper presented to me.

Redirect examination :

Q. Who was governor at that time?

A. Don Ignacio Pisquera, unless I am mistaken, but I think he was at that time.

Q. Who appointed you?

A. You mean chief clerk?

Q. Yes, sir.

A. Don Ignacio Pisquera.

Q. Did you know Francisco Alejandro Aguilar?

A. From Guaymas?

Q. Yes, sir.

A. Yes, sir.

Q. Was he a Mexican citizen?

A. Yes, sir.

Q. Did you know Manuel Maria Gandara?

A. You mean the one who was governor?

Q. Yes, sir.

A. Yes, sir.

Q. Was he a Mexican citizen?

A. Also.

Q. Wasn't he a brother-in-law of Francisco Alejandro Aguilar?

A. I am not certain about that.

74 Q. Do you know whether Pisquera and Francisco Aguilar were on good terms—friendly—in 1857?

A. I never knew they were in bad terms.

Q. On what terms were Pisquera and Manuel Maria Gandara, if you know, at that time?

A. As they were always enemies in politics, I remember now in what terms they were at that time.

Q. Well, what were they?

A. I can't say; I can't estimate it.

Q. Is Pisquera alive or dead?

A. He is dead.

Q. Is Manuel Maria Gandara alive or dead?

A. Also dead.

Q. Do you know the difference between the papers, called the expediente, that are kept in the archives and the ones that are given to the purchaser of the land? Yes or no is all I care for.

A. Yes; the first one is the original, and the authorized testimonio is the second.

Q. Now, the papers that were sent to you to examine were sent from the archives, were they not?

A. Yes; from the "oficina de liquidacion."

Q. And they were originals, were they not?

A. That office sent to me the papers.

Q. And those are the papers that are kept in the office and not given to the ones that buy the land?

A. Yes, sir; they are the originals.

Recross-examination:

Q. You sent the papers yourself, as chief clerk, to Mr. Gutierrez, didn't you?

A. No, sir; they were returned to the "tesarerio de liquidario."

Q. You can read Spanish, can't you?

A. I can read a little.

Q. Can't you read it very well, Mr. Tapia?

A. I don't know; probably so.

75 Q. A chief clerk of the treasurer general ought to be able to read it pretty well?

A. Yes, sir; but after being seventy-one years old, like I am now, it is very probable that a man would forget.

Q. You haven't forgotten how to read your native language, have you?

A. Not completely.

CARLOS Y. VELASCO a witness called and sworn on behalf of the petitioners, testified through the medium of the official interpreter of this court as follows:

Direct examination.

By Mr. HENEY:

Q. State your name, age, and place of residence.

A. Carlos Velasco; residence, Tucson; age, fifty-four.

Q. Are you a Mexican citizen?

A. I am.

Q. Where were you born?

A. In Hermosillo.

Q. Have you held any public offices in Mexico; and, if so, what?

A. In the district of Altar I was mayor of a village. In the year 1883 and 1884 I was judge of the first instance in the district of Altar. In the years 1871 and 1872 I was deputy to the congress of Sonora from the district of Magdalena; in 1872 and 1873 also for the same district. In the year 1873 I substituted deputy to the national congress from the State of Sonora.

Q. Is that a member of the national congress?

A. Yes; in the absence or inability of the regularly elected member to serve. In 1874 and 1875 I was president of the investigating committee of the States of Sonora and Chihuahua—the frontier States.

Q. What were the duties of that commission?

A. To investigate the damages caused by American citizens and by Apaches on the other side of the line and to investigate the damages occasioned by Mexican citizens on this side of the line.

76 By Mr. HENEY: I propose to show the history of the State of Sonora, partly to show the destruction of records and so on during the period running from 1844 to 1857 and a little later. I do not suppose the court takes judicial notice of those matters of history, and these are particularly connected by showing the relation between Gandara and Pisquera, and I desire to show the object Pisquera had in destroying the titles of Gandara and his confiscation of all Gandara's property that he could lay his hands on at that time and the return of it afterward by the national government.

Q. Did you know Manuel Maria Gandara in his lifetime?

A. I did.

Q. Did you know Governor Pisquera in his lifetime?

A. I did.

Q. Who was governor of Sonora in 1836 and 1837?

A. Gandara.

Q. By "Gandara" do you mean Manuel Maria Gandara?

A. Manuel Maria Gandara.

Q. At that time who succeeded Gandara, and when?

A. In 1837 General Urrea was commander of the federal troops in Sonora, and Gandara was governor. Urrea then revolted against the central system which was then in force in Mexico and Gandara seconded the movement, and a short while afterwards Gandara retired to his hacienda at Topaquí and left the government in the hands of Urrea.

Q. That was in 1838?

A. In 1837.

Q. Then what happened? If you have any memoranda from which you can refresh your memory you may use it.

A. I hav'n't any here. At that time Gandara before going out of office called a congress to meet at Sonora, and this congress confirmed Urrea as governor and commandant of the military.

Q. When did Urrea leave for Sinaloa?

A. It was in 1838, and he went there with troops to fight

77 in favor of the federal system—to continue the revolt in favor of the federal system. Gandara then again revolted in Sonora.

Q. In the meantime when Urrea left he left Don Leon Escalante as governor, didn't he?

A. Leonardo Escalante was his name.

Q. Now, in 1839 what happened?

A. Urrea returned with his troops from Sinaloa.

Q. What had Gandara done in the meantime? Had he become governor in the meantime?

A. In the meantime Gandara had triumphed and become boss of the government.

Q. And Urrea returned, and what did he do?

A. When he returned he attacked Gandara. Gandara had collected troops, and he awaited him with an armed force, and there was a revolution and that revolution lasted up the year 1840.

Q. What was the wind-up of that, and who was governor in 1842?

A. (Referring to memoranda.) In 1842 Gandara was governor.

Q. Who made him governor in 1842, if the general government did not interfere and assist in this fight against Urrea at that time?

A. The general government did.

Q. What became of Urrea then?

A. Urrea left the country and returned in 1843, having been named governor and military commander of the State of Sonora.

Q. By whom?

A. By Santa Ana.

Q. How long did he remain governor then?

A. Up to 1845.

Q. Then who was the governor in 1844?

A. Urrea.

Q. In 1845 what occurred?

A. Gandara again revolted and Urrea had to levy some troops and they fought up to the month of September, and Gandara was victorious.

Q. And Urrea?

A. Urrea left the State and never returned to it.

Q. Who was governor from 1845 to 1853?

78 A. Gandara, with the exception of a few months when Jose Aguilar acted as vice-governor—provisional governor.

Q. Who was governor in 1854?

A. General Jose Maria Yañez.

Q. Who made him governor?

A. Santa Ana.

Q. Santa Ana was dictator at that time, was he?

A. He was dictator.

Q. What became of Gandara in 1854?

A. He remained as second in command of the military forces.

Q. Which military forces?

A. The federal troops.

Q. And Yanez was military commander as well as governor at that time?

A. Yes, sir.

Q. Now, what happened?

A. Santa Ana himself removed Yanez from office, and in October of the same year he sent Colonel Arrelleno.

Q. As governor and commander of the troops?

A. Yes, sir; governor and military commander.

Q. Now, in 1855?

A. General Espejo was placed in the government in place of Arrelleno as governor and commander, and then Gandara revolted against Espejo and took possession of the government.

Q. Now, in 1856?

A. In the month of February Arrelleno resigned and delivered the government of Aguilar.

Q. Which Aguilar?

A. Don Jose Aguilar. And in the month of April he himself brought about the revolt of the federal troops that he commanded and the National Guards of Ures against Aguilar himself and in his favor.

Q. At the time he turned the government over to Jose Aguilar as governor he retained the office of military commander himself, didn't he?

A. He did.

Q. Do you know whether Jose Aguilar was any relation of Francisco Alejandro Aguilar?

A. I think he is his brother.

79 Q. And wasn't Manuel Maria Gandara a brother-in-law of Francisco Alejandro Aguilar?

A. Yes, sir.

Q. Now, in 1856, in July, what happened?

A. Gandara revolted with the federal troops in the month of April. They arrested his brother-in-law, Don Jose Aguilar, and named as governor Don Ramon Encinas. Pisquera at that time was in the frontier. He was inspector of the military colonies. He raised troops in the frontier and marched on Ures, and Gandara at the beginning — July retreated towards the interior of the country of Chihuahua and in the beginning of August Pisquera (interrupted)——

Q. Does he mean that Gandara went alone or that he took troops with him in retreating?

A. He went alone. In the beginning of August Pisquera laid siege to Ures and fought there eight or ten days against the federal troops and defeated them and finally entered the town.

Q. What did Pisquera do with the government?

A. He placed Aguilar in the government.

Q. Jose Aguilar?

A. Yes, sir; and in the month of July there were some elections held.

Q. In 1857?

A. Yes, sir.

Q. Who was elected governor?

A. General Pisquera.

Q. Do you know when he took office?

A. In September, 1857.

Q. In 1844, when Urrea was governor, by whom was the treasurer general or departmental treasurer appointed?

A. By the federal government.

Q. By the president?

A. By the president.

Q. Do you remember who was the president then?

A. Santa Ana; and at the end of the year Canaliso was president.

80 Q. Where did you get these notes from which you have been testifying?

A. From the collection of laws.

Q. Didn't you make some notes from the original records down in the secretary's office also?

A. Also. Those ones for the year 1844, I made them in conjunction with Mr. Rochin.

Q. From what office?

A. Office of the treasurer.

Q. Were you in Tucson in 1864?

A. Yes, sir.

Q. Did you see Manuel Maria Gandara here at that time?

A. I did. I lived here in the frontier at Saric.

Q. Were the relations between Pisquera friendly or otherwise in 1856 and 1857?

A. They were not.

Q. They were not friendly, you mean?

A. No; they were not friendly.

Q. Did you ever have a conversation with Pisquera in regard to the confiscation of Gandara's property?

A. In 1872.

Q. What did he say about it?

A. Recalling the events of former years, he said that he was very sorry that he did not confiscate all of the property of Gandara; that he had issued out a decree that he had not confiscated that on account of some considerations, but that he did wrong in not confiscating that, because if he had done so Gandara would never again have made another movement.

Q. Do you know whether or not Pisquera actually did take possession of the haciendas of Gandara in Sonora?

A. In the year 1856, do you mean?

Q. Yes.

A. He took possession of them entire to place in them the forces that he had under him and their horses, and he made use of everything that was in the haciendas, such as horses and wagons.

Q. Did he sell any of his personal property?

A. All the grain that he could and everything that he could he sold.

81 Q. In 1844 what were the relations between Urrea and Gandara?

A. The same as they were in 1856 and 1857; they were bad.

Q. Between Urrea and Gandara, I mean?

A. Yes.

Q. Do you know Francisco Gandara?

A. You mean the son of Don Manuel?

Q. Yes, sir.

A. Yes, sir.

Q. Do you know where he is now?

A. I don't know whether or not he has returned from the capital of Mexico. Five days ago he was in the capital of Mexico.

Q. Did you know Antonio Gandara?

A. I kn-w him also.

Q. Is he alive or dead?

A. He is dead.

Cross-examination.

By Mr. REYNOLDS:

Q. Mr. Velasco, who did you say was governor in 1834?

A. I haven't stated who was governor then.

Q. Well, who was governor in 1836?

By Mr. HENEY: Refer to your notes, Mr. Velasco; I want it right.

A. Gandara.

Q. Was he governor of the department or governor of the State of Sonora?

A. Governor of the department.

Q. States had been changed to departments prior to that time, hadn't they?

A. Yes, sir.

Q. Now, how long did he remain governor of that department before he went out?

A. In 1837 he went out of Sonora.

Q. Who took his place?

A. Urrea.

Q. How long did Urrea act as governor?

A. Up to 1839. He went out to the State of Sinaloa and he left Escalante and he returned in 1839, and then the revolution between Gandara and Pisquera occurred, but in the meantime Gandara had again taken possession of the government.

82 Q. Do you know the exact time that Gandara went out and Escalante went in as governor? Look at your notes.

A. The exact date I don't have in my notes, but I have the years.

Q. Who appointed Gandara governor of the department—I mean during the year- 1836 and 1839?

A. In 1836 he was appointed by the president of the Republic.

Q. Do you know whether Escalante was ever appointed by the president of the Republic or not?

A. No; he was appointed by Urrea.

Redirect examination:

Q. Do you know what the condition of the archives in Sonora has been as to the care they received from 1857 down to 1864 or 1865—or, say, down to 1880?

A. It has been very bad.

Q. What particular facts can you recall of your own actual knowledge in regard to the records in the State of Sonora and as to what care they have received and what has happened to them, if anything, in the way of destroying them?

A. In the year 1875 and before leaving Ures with my commission, I applied to Pisquera to let my clerks see the archives, and I myself went there with those clerks and I found the condition was deplorable.

Q. Explain more fully what you mean by deplorable. What was their actual condition?

A. They were all mixed up and incomplete.

Q. Was there any regularity about them?

A. None whatever. There were papers of the years all mixed up indiscriminately and there were many documents wanting. The revolutions of 1856 to 1861 or 1862 had torn to pieces very many expedientes. It is publicly known that at the time the
83 French troops came into Ures the documents were kept in the house of the government, and it had rained there and it was very muddy, and that the French troops had thrown these expedientes out into the mud—very far out—threw them out in order to step over the mud—for stepping ground.

Q. In what year was that?

A. In the year of French invasion, in 1861 or 1862. I was not a witness to that. I didn't witness that, but it is known all over Sonora, and at other times revolutionary parties would go in, and if they were parties from the opposite side that had pending cases they would immediately go to the archives and destroy every paper.

Recross-examination:

Q. You are pretty familiar with the history of Sonora, aren't you, Mr. Velasco?

A. My knowledge is not very good, but I can recollect some events.

Q. Was the capital of Sonora ever at Guaymas?

A. I don't remember that it has been in Guaymas. During the time of Don Jose Aguilar it was once in Guaymas, but I don't remember whether legally or not. During the revolutions they made the capital wherever they wanted to.

Q. But the main officials—the civil officials—of Sonora, either as a State or department, were never at Guaymas, were they?

A. They were.

Q. When?

A. In 1844.

Q. Which civil officials?

A. The officers of the general government.

Q. How do you know that?

A. From many documents which I have seen. This gentleman, General Ignacio Lopez, was a federal officer. He was the officer of the departmental treasury of Sonora.

84 Q. Were the archives removed to Guaymas from Ures?

A. Not those of the general government.

Q. Was Lopes a federal officer?

A. Yes.

Q. Didn't he have the archives at Hermosillo and Guaymas with him?

A. The federal officers have not their offices nor their archives scattered about.

Q. Do you know how long the government remained at Guaymas?

A. No, sir; I do not. I do not remember.

By Mr. HENEY: We now offer in evidence the titulo of 1807.

(Said document was thereupon marked Exhibit "8.")

We also offer the titulo of 1844 as secondary evidence of the contents of the expediente.

(Said document was thereupon marked Exhibit "9.")

We offer them for every purpose for which they may be competent, and we will stipulate to accept the translation which was made by Mr. Flipper of those expedientes, with the exception of three or four minor details which we will take up later on in the evidence.

TEODORA DE TROIL, a witness called and sworn on behalf of the petitioner, testified through the medium of the official interpreter as follows:

Direct examination.

By Mr. HENEY:

Q. Where do you live?

A. At Los Reales.

Q. How old are you?

A. Fifty-three years old.

Q. Where were you born?

A. At San Javier.

Q. Are you a native of the San Javier mission?

A. I am.

Q. Were you ever in Calabasas, in this county and Territory?

85 A. Yes, sir.

Q. When were you first there?

A. In the year 1854.

Q. Do you remember what part of the year it was?

A. I do.

Q. What month?

A. In January.

Q. Do you know where the old houses are at Calabasas?

A. Yes; I do.

Q. Who, if anybody, was living there when you were there in 1854?

A. Don Frederico Hulseman.

Q. He was married to your sister, wasn't he?

A. Yes, sir.

Q. What was he doing there?

A. He was a shareholder of live stock—sheep—with Don Manuel Gandara, the governor of Sonora.

Q. Was he doing any farming?

A. Yes.

Q. What land was he farming? Where is it located from the old house?

A. On this side of the river; the cultivated lands were at the other side of the river. On this side is the ranch.

Q. The ranch is on the east, up on a bluff or little mesa—the house?

A. I think so.

Q. And the farms were down right below the house?

A. Yes, sir; to the south, on the other side of the river.

Q. What river is that?

A. The river of the Santa Cruz.

Q. Did you see sheep there at that time?

A. I did.

Q. How many?

A. He said that they had fifty thousand leased. There were very many. There were fifty-two corrals. Some remained up on the mountain and others remained in the ranch and others in the valley.

Q. How many men had Hulseman working here?

A. Sometimes he had fifty-three and sometimes he had more, altogether with their families.

Q. And were they all living there at Calabasas?

A. Yes, sir.

Q. From whom was he renting the land?

A. From Don Manuel Maria Gandara.

86 Q. Do you know where the old Tumacacori Mission church is?

A. Yes, sir.

Q. How far is that from the houses you speak of as Calabasas and in what direction?

A. It is down below the river. I don't know the distance, but it is nearer to Tubac than to Calabasas.

Q. Can you see the Tumacacori church from Calabasas?

A. Oh, no.

Q. How long did you remain there or how long did Hulseman remain there, to your knowledge, after you saw him?

A. He may have remained there five years. I remained there three years myself.

Q. And did Hulseman and all these people remain there all this time?

A. No, sir.

Q. Did Hulseman remain there?

A. No, sir.

Q. During this time that you were there I mean?

A. He did, and two years before that he had been there.

Q. Did all these people remain there, too, during the time you remained there?

A. Yes; until the stock was taken out towards Tumacacori on account of the hostility of the Indians.

Q. Were they doing anything besides farming and raising sheep; were they manufacturing anything there?

A. Yes, sir; they had a weaving mill there to make serapes—made fine and coarse serapes and carpets.

Q. What become of Hulseman?

A. I don't know.

Q. Do you know whether he is alive or dead?

A. I know that he is alive yet.

Q. Where did you last hear of him?

A. In Mexico, in the city of Mexico.

Q. How long ago?

A. In the year 1861, when the war between the North and South broke out, I went with my husband to New Mexico, and in the year 1864 Dona Carmen Elias received a letter, in which he stated
87 that he was in the city of Mexico and had a store there.

Q. That is Hulseman?

A. Yes, sir.

Q. Have you ever heard from him since?

A. No, sir.

Cross-examination.

By Mr. REYNOLDS:

Q. What year did the American troops take possession of that ranch?

A. I don't know; but it was about a year after the commission had come over, about a year or a year and a half.

By Mr. HENEY:

Q. The boundary commission, do you mean?

A. Yes, sir; the boundary commission—the American commission and the Mexico commission.

Q. Did you know John Davis there in 1854?

A. No, sir.

Q. Did you know John Clark?

A. Yes, sir; I did.

Q. Do you know whether John Clark is alive or dead?

A. I have heard that he is dead.

Q. He was there, working with Hulseman, wasn't he?

A. Yes; he was working with Jose Maria Gandara, taking care of the ranch, when the troops took possession of it. There was two of them; one was called Henriques.

Q. Henriques Alpin?

A. I don't know his name?

Q. Do you know what become of him?

A. Yes, sir; they said he was at Santa Cruz. I know now that he is dead.

By Mr. HENEY: I will state for the information of the court that John Clark died on March 6th of this year.

By Mr. REYNOLDS (resuming):

Q. Did you ever see Governor Gandara?

A. No, sir; not in the ranch.

Q. Did you ever see him anywhere?

A. I saw him at Topaqui, his residence.

88 Q. At the time you were there in 1853 and 1854 was he governor of Sonora?

A. I so understood.

Q. Do you say they had fifty thousand sheep on that ranch?

A. Yes; so I understood. It might have been more. There were very many of them. I saw them myself.

Q. How much land did they cultivate?

A. I don't know that.

Q. Do you know when those houses were built there?

A. Yes; in those times—during that time when they were there. They were ruins before, and then they rebuilt them at the expense of Manuel Maria Gandara. He built them all himself at his own expense.

Q. How do you know they were ruins? Were you there before?

A. Yes, sir.

Q. When?

A. Some time before.

Q. What were you doing there?

A. I wasn't doing there; I passed through.

Q. Where were you going?

A. To Santa Cruz.

Q. From where?

A. From San Xavier.

Q. Does the road go by there?

A. Yes, sir; it passes below.

Q. What time did you go by there?

A. I was very young then, but I remember very well.

Q. What year?

A. I cannot state the year.

Q. How old were you in 1854?

A. I was born in 1841.

89 WILLIAM DE TROIL, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination.

By Mr. HENEY:

Q. How old are you?

A. I will be seventy-five in September.

Q. What nationality are you?

A. Dane.

Q. How long have you been living in Arizona?

A. I lived five years formerly, and now since 1876—19 years.

Q. When did you first come into Arizona?

A. I came first in 1855 with the boundary commission, in the winter or spring.

Q. Do you know where old Calabasas is?

A. Yes, sir.

Q. In this county and Territory?

A. Yes, sir.

Q. How close to that did you come in with the boundary commission?

A. I passed by it about the latter part of May, or first of June, 1855. I passed and went up to what is called the Potrero—the Kitchen ranch a little below Nogales—and there we camped.

Q. Did you find anybody at Calabasas?

A. I didn't, because I was never near it, but I understand there were two persons in Calabasas.

Q. Did you find anybody at the Potrero?

A. Nobody excepting us—Lieutenant Hastings with detail of dragoons—two companies.

Q. Did you go to Calabasas at all?

A. I did not; but I went to Tumacacori, and there were two other men. I was sent by Hastings with the wagon to receive corn.

Q. At Tumacacori what did you find?

A. There was an old church there, and there I received corn and went to Tubacand; received another lot of corn. There were no persons there except two Germans, in Tumacacori.

90 Q. What were they doing there?

A. Taking care of the place, I suppose, for Gandara. One of them was called Charlie; he sold the corn to Lieutenant Hastings at the Potrero and I went to get it.

Q. And the other fellow's name?

A. Frederico or Fritz.

Q. Is that Frederico Hulseman?

A. No, sir; that is an old man.

Q. Did they have any land under cultivation there?

A. Yes, sir; there was gardens and things there, but they could not do much because they were too much afraid of the Apaches; it was to keep the place for Gandara, I suppose.

Cross-examination declined.

PETER R. BRADY, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination.

By Mr. HENRY:

Q. Mr. Brady, how old are you?

A. I am in my seventieth year.

Q. Where do you live?

A. I live now in Florence, in the county of Pinal, Territory of Arizona.

Q. When did you first come to Arizona?

A. In April, 1854.

Q. And what part of the Territory did you land in or were you first?

A. I was on a railroad survey, and come on down pretty much the route of the Southern Pacific railroad as it runs now from Cow springs by Apache pass.

Q. Did you get into the neighborhood of Calabasas that year?

A. We came by there.

Q. What time of the year?

A. April.

Q. 1854?

A. Yes, sir.

Q. Do you know where the old Tumacacori Mission church is?

A. I do.

91 Q. How far is this place that you call Calabasas from there and in what direction?

A. I don't know the exact distance nor the course it is, and I have traveled over that road many times.

Q. Have you no idea?

A. I should think it is southeast from the old mission of Tumacacori to the ranch of Calabasas.

Q. Was anybody living at Calabasas when you got there?

A. There was.

Q. Who were they?

A. — German there was named Frederico Hulseman; he was mayordomo or superintendent of the ranch. There was an American there by the name — John Clark and another one by the name of John Davis, and a good many Mexicans, twenty odd, I suppose, perhaps thirty—several families living there.

Q. And what were they doing?

A. Well, there was a large band of sheep there that Hulseman had of Gandara's, so I understood; they were sheep-herders, I suppose. They had some few other stock there, but not much—horned cattle and mules and horses and donkeys.

Q. Were they tilling land any?

A. I don't recollect. There might have been a little patch—a milpa or potrero—in front of the house, south of it, I think.

Q. Did Hulseman tell you who he was in charge for?

A. He did. He was mayordomo taking charge of the ranch for the governor of Sonora.

Q. And did the others speak of it, too?

A. It was generally known as such. We were their guests three days.

Q. What kind of houses did they have?

A. Adobe houses, built in the old Mexican style.

Q. Were they extensive?

A. Quite so.

Q. Good houses?

92 A. Good houses; a large portal and entry in them and a courtyard inside.

Q. Do you know whether they were manufacturing anything there?

A. Since listening to the evidence here I am under the impression that they were making these Mexican serapes there, but I wouldn't be certain. I know they had a large quantity of wool stored there that Hulseman showed me.

Q. Did they have any land fenced that you recollect?

A. Some of it was fenced in in little pastures in the Santa Cruz bottom.

Q. Just below the house. Were you over to Tumacacori?

A. I was.

Q. Did you find anybody there?

A. There were three Germans living there.

Q. Do you know their names?

A. I do.

Q. What were they?

A. Theodore Morhman, and a Swiss there named Henry Alpin, and a German named Fritz; I don't recollect his other name. They were afterwards killed by Indians. I knew them two men a great many years afterwards.

Q. What were they doing there?

A. They were the nucleus of a German colony that Gandara was going to establish there on that land.

Q. Was it generally understood among them at that time that Gandara claimed to own that land?

A. Yes, sir; I should judge so.

Q. Did you go back there at any time?

A. Not for some time afterwards.

Q. When was the next time that you went back?

93 A. During our civil war, maybe eight or nine years afterwards.

Q. Were you there at any time between 1863 and 1865?

A. Yes, sir; I was there about 1863.

Q. Did you know Antonio Gandara and Pancho or Francisco Gandara?

A. Yes, sir; I knew them.

Q. Sons of the governor?

A. Yes, sir.

Q. Did you see them there during the war time?

A. No.

Q. Were you down there any length of time?

A. Passed by there; passed through that country.

Q. (Exhibiting photograph.) Do you recognize that?

A. It looks a little like the mission of Tumacacori. I don't know whether it is or not—yes; that is what it is.

Q. And it is south of that and in that neighborhood that you saw these men at work?

A. They were living right close by there. I think they were living in a portion of the outhouses that belonged to the mission.

Cross-examination declined.

JESUS MARIA ELIAS, a witness called and sworn on behalf of the aforesaid petitioners, testified through the medium of the official interpreter of this court as follows:

Direct examination.

By Mr. HENEY:

Q. What is your full name?

A. Jesus Maria Elias.

94 Q. State your age and where you live.

A. I am 67 years of age, and my residence is Tucson.

Q. Where were you born?

A. Tubac.

Q. How far is Tubac from Tumacacori?

A. About six miles.

Q. What is your father's name?

A. Juan Elias.

Q. Where was he born?

A. In Tucson.

Q. What was your mother's name?

A. José Orosco.

Q. Where was she born?

A. Tubac.

Q. What was her father's name?

A. José Antonio Orosco.

Q. Where was he born, if you know?

A. I don't know.

Q. Where was he living, or was he ever living at Calabasas?

A. Yes, sir; he lived in Calabasas.

Q. Do you know where your mother and father were married?

A. In Calabasas, when my grandfather was administrator of the hacienda of Tumacacori, on account of the mission of Tumacacori.

Q. Were they married in the church?

A. Yes, sir.

Q. (Exhibiting photograph.) Is that the church you speak of?

A. Yes, sir.

(The photograph referred to is marked "D.")

Q. Did you have any brother or sister older than you?

A. Yes, sir.

Q. Which?

A. A sister.

Q. Where was she born?

A. At Calabasas.

Q. How long did you live at Tubac?

A. I was born at Tubac, and I probably lived at Calabasas two or three years, and from the age of seven I was brought to Tucson,

and was raised up here, and then went back to Tubac. I was raised with my grandmother.

95 Q. Did you pass Calabasas at any time before 1844?

A. Yes, sir.

Q. Was there anybody living at Calabasas at that time?

A. No, sir; it was a desert.

Q. And at Tumacacori?

A. It was a desert.

Q. And at Guebabi?

A. Excuse me; in Tumacacori there was some Indians at that date.

Q. When?

A. 1844.

Q. How many?

A. I don't know how many. There were some Indians there, though.

Q. When did you first see anybody living at Calabasas after that?

A. About the year 1852 or 1853.

Q. Who did you see living there?

A. A German.

Q. What was his name?

A. Frederico.

Q. Hulseman?

A. I don't know his last name; I knew him only by the name of Frederico.

Q. What was he doing there?

A. He was there with sheep and with the farm as administrator or man under Gandara.

Q. Did he have any men under him working?

A. He did.

Q. About how many?

A. I can't state how many. He had men occupied in caring for the sheep and in weaving blankets and in farming, but I can't state how many.

Q. And were their families living there with them?

A. Yes, sir; their families did.

Q. Did they have good houses?

A. Houses that he himself, Mr. Gandara, rebuilt. They
96 were houses that had been in ruins before, and he himself built them up again.

Q. Did you see those ruins?

A. I did.

Q. Are they the houses that are now known as Old Calabasas, up on a little mesa?

A. Yes, sir; they are the same. They are the same houses up on the mesa on the edge of the meadow near the river.

Q. Did you know where the monuments were of the Calabasas grant and the Tumacacori grant?

A. I knew some of them. I didn't know the others.

Q. How did you know those monuments?

A. I knew them first through conversation with surveying parties from Sonora, from the district of Magdalena. I knew the points.

Q. Was that before this country became part of the United States?

A. Before it came part of the United States I heard the conversations only where the different points were.

Q. Who did you hear them from?

A. A man by the name of Joaquin Quinquidor, and Leonardo Orosco, and another one named Levara.

Q. Who were those men?

A. They were from the State of Sonora.

Q. Where were they living?

A. They lived at Imurez, and others, too, at Magdalena, and another one at San Ygnacio.

Q. How did they purport to know the monuments?

A. Because they were coming and surveying lands.

Q. For the government of Sonora?

A. Yes, sir. That was in 1848.

Q. Now, did they point out to you the north monument of the Tumacacori grant?

A. Yes, sir.

97 Q. And is that the monument you pointed out to Mr. Bonillas, or is that the place you pointed out to Mr. Bonillas as being the north monument of the Tumacacori grant?

A. It is the same one.

Q. Did they point out any other monuments of the grant to you?

A. They did not; only the ones on the north.

Q. When you lived in Tubac did you know where the monuments of the presidio of Tubac were on the south?

A. I did not.

Q. What was there there to mark the point of that north monument—what natural object?

A. One of them—the one to the west—is the Cañada de los Metates, and to the east the Davisidero.

Q. Wasn't it commonly known among the inhabitants of Tubac as to where the southern boundary of the presidio of Tubac was when you lived there?

A. No, sir; I didn't know where the boundary lines on the south of the presidio of Tubac were.

Q. You left there when you were very young?

A. Yes, sir; I was young.

Q. Were you on the Calabasas grant between 1863 and 1865 or around Calabasas?

A. Yes, sir; I went in and out during all that time.

Q. Did you know Manuel Maria Gandara?

A. I knew him.

Q. That was Governor Gandara?

A. Yes, sir; governor of the State of Sonora.

Q. Did you see him here from 1863 to 1865 or about that time—in Tucson, I mean?

A. Yes, sir; I saw him here.

98 Q. Were you in any business with him?

A. I was.

Q. What?

A. To supply the government troops with meat when they were passing over into New Mexico at the time of the war with South.

Q. And did you know at that time Antonio Gandara and Francisco Gandara, the sons?

A. Yes, sir; I did; I knew them in his company here.

Q. Did you ever go to Calabasas with any of them?

A. Yes, sir.

Q. With whom?

A. With Don Manuel Gandara.

Q. Who was at Calabasas at that time?

A. Pancho Francisco Gandara.

Q. What was he doing there?

A. He was there in the ranch, and Don Manuel invited me to go over with him to see him.

Q. Was he farming there?

A. No, sir; I didn't see him. We went one day and came away another day.

Q. Did he have any lands fenced there down the valley?

A. It was all desert. There were no stock there that might cause any damage and there was no need of having any fence.

Q. What did he appear to be doing there; what was he doing there, if you know?

A. What was he doing? I don't know what he was doing; he was there at the ranch; I suppose he was holding possession of the ranch—taking care of it.

Q. Now, where was this house that he was living in?

A. About on the hill.

Q. That is the same house that you were talking about at Old Calabasas that was a ruin?

A. Yes, sir.

Q. What date was that?

A. It was about the year 1864 or 1865.

Q. When was the next time that you were down at the Calabasas country there?

A. After that different times I would go and come.

Q. Do you remember the year the next time you went down there?

99 A. No; I don't remember the time when I went there afterwards.

Cross-examination.

By Mr. REYNOLDS:

Q. You have known this place, Calabasas and Tumacacori, ever since you were a child, haven't you?

A. Yes, sir; from the time I came to the age of reason.

Q. And you have had occasion to go and come by and to there very often in the meantime, hav'n't you?

A. All the time—thousands of times—during my youth and afterwards.

Q. You say your father and mother were married at the Tumacacori church in 1826, or did you say in 1836?

A. No, sir; I hav'n't said anything to that effect.

Q. When you were a small boy you lived at Tubac?

A. Yes; and also Calabasas.

Q. Were there many Indians around there then living there?

A. There were Papagos and Pimas at Tumacacori.

Q. Well, along in 1840 and between 1840 and 1850 pretty nearly everybody had left there but a few Indians, hadn't they?

A. Yes, sir; it was depopulated about.

Q. Along between 1843 and 1844 and up to 1848 and 1849 it was deserted, wasn't it, those four or five years along there? That whole country I have reference to.

A. Calabasas was depopulated, abandoned; yes.

Q. And nobody was remaining around Tumacacori except the Indians there?

A. A few Indians only.

Q. Then along in 1852 and 1853 Mr. Gandara went up there with his stock, didn't he?

A. He didn't; I didn't see him; I only saw the man Frederico, the administrator.

100 Q. Well, he went along there in 1852 or 1853?

A. Yes, sir; I saw him there.

Q. Prior to that time the place had been abandoned, hadn't it?

A. Yes, sir; and he came off that place in the year 1854, when the Apaches attacked him—abandoned everything.

Q. You say that you knew some of the monuments of the Calabasas grant?

A. I did.

Q. You say you first heard of it from a surveying party along about 1848?

A. From the conversations of those parties I knew the directions, and afterwards when, by the request of Mr. Cambell (Cameron), I went to show them. I knew where they were.

Q. Did you find any monuments built of mortar and stone?

A. Stone only; piled up together.

Q. These men came from Sonora?

A. The surveyors?

Q. Yes.

A. Yes, sir.

Q. Might not that have been about 1852 or 1853 instead of 1848 that you had this conversation with these men?

A. No, sir; it was in 1848.

Q. Did they take you to the monument or did you just hear them talk about it and then go and find it for yourself?

A. I heard them conversing at the mission of San Xavier. They arrived at the mission. I didn't see the monument. I heard their conversation.

Q. What did they say about it?

A. That they had made measurements along the rancho of Calabasas.

Q. And did they say that the monuments were at the end of those measurements?

A. Yes, sir.

Q. Did they commence to measure from the old Calabasas ruins?

A. I can't state where they began.

Q. But they had been there measuring it?

A. They passed through there and arrived at San Xavier.

101 Q. How long after that was it that you went down there and saw that north monument?

A. I can't remember at present. I don't remember. I think it was ten or twelve years afterwards.

Q. What were you doing there ten or twelve years afterwards looking for that monument and who were you with?

A. I wasn't there searching for monuments. In passing through one of the points that they had talked about I saw one of the monuments without making any investigation for monuments. I wasn't hunting them up.

Q. You took Mr. Bonillas to that point and pointed it out to him as the north monument, did you?

A. Yes, sir; I was with him there and told him the points that I knew were the monuments from the conversations that I had heard.

Q. You spoke a while ago of a man named Cambell. Who was he?

A. There he is (indicating Mr. Colin Cameron).

Q. When was it you took Mr. Cameron to it?

A. A few months ago. I don't remember the date.

Q. Did he tell you he was looking for the Cañada de los Metates?

A. He asked me how that part was called.

Q. He took you to it first and then asked you what it was called?

A. Yes, sir; in his company. He asked me which was the place called Cañada de los Metates and which was the Devisadero and I told him which they were.

Q. Do you know where the Cerro de San Cayetano is?

A. I do.

Q. Can you see it from Tucson?

A. It is possible.

Q. I wish you would go to the window and see if you can see it.

A. (Witness went to the window indicated and returned.) I think so. I think I can show it to you.

Q. How long have you lived in Tucson?

A. I think I have lived here since the year 1834 or 1835.

102 Q. Well, you have seen what is commonly called—always called—the Cerro de San Cayetano? You can see it from Tucson, can't you?

A. I had not attempted to look at it from here. I hadn't made any attempt before, but I think you can see it from here.

Q. That is, the place that is down the valley that you think you can see from here—the Cerro de San Cayetano—is the one that has always been called that ever since you can remember, is it not?

A. I think that it is possible to see it. I don't say that you can see it from here, but I think it is possible.

Q. You have always understood that point which you say you think you can now see to be the point known as the Cerro de San Cayetano?

A. I suppose it is the same. I don't state positively, but I suppose it is possible to see it from here.

Q. Is not the Cerro de San Cayetano that I have been referring to south of Tubac?

A. Yes, sir; it is.

Q. Now, you say you were in business with Mr. Gandara in 1863 and 1864 supplying the soldiers with meat?

A. In 1863 and 1864.

Q. And you went with him down to Calabasas and there you saw Francisco and Antonio Gandara?

A. Yes.

Q. There was no stock on the ranch at that time, was there?

A. No.

Q. Nothing there except the two men?

A. They were there themselves. There was nobody else. There were other persons in different portions of the valley.

Q. I am speaking now of Calabasas?

A. They were the only ones there.

Q. And did they come there just before you went or not?

A. They were there already when myself and Manuel went there.

Q. They did not have their animals there?

A. No, sir; they were by themselves.

Q. Were their homes in Sonora? Did they live in Sonora?

103 A. Yes; in Sonora.

Redirect examination:

— Mr. Elias, the Cerro San Cayetano which you speak of, you mean the Sierra San Cayetano range of mountains, don't you?

A. I refer to the peak of San Cayetano, which is north of Calabasas.

Q. And it is a peak in a range? It is a range of mountains called San Cayetano, is it not?

A. It is at a range called the Salero. It is at the edge of the valley near Agua Fria, near Calabasas.

Q. North of Calabasas?

A. Yes, sir; to the north of Calabasas.

Q. Do you know a red hill that is in the Sonoita cañon or at the edge of the Sonoita cañon, near the old Sanford ranch, that is called Cerro San Cayetano?

A. I only know of one mountain or peak by the name of San Cayetano, and the range of mountains is at the edge of the valley of Sonoita.

Q. Do you know where the ruins of Calabasas are?

A. Yes, sir; I do. Do you mean the ruins of the ranch?

Q. Yes; the house there on the hill?

A. Yes, sir.

Q. You have always known that place there as Old Calabasas haven't you?

A. I have known no others but that.

Q. Do you know where the ruins of Guebabi are?

A. I know the ruins of Guebabi.

Q. Did you go there with Mr. Bonillas and Mr. Cameron?

A. I did.

Q. Is that the place that you told them was the ruins of Guebabi, and have you always known that as the ruins of Guebabi?

A. Yes, sir; that is the place.

Q. That is on the trail going between San Xavier or Tucson and Santa Cruz, is it not?

A. The same.

Q. That trail was always traveled by the people from Sonora,
104 in the neighborhood of Santa Cruz, coming to Tucson or San Xavier?

A. Yes, sir; it is the same road.

Q. Do you know where the meadow of Guebabi is?

A. I know it.

Q. And did you point out that place to Mr. Cameron and Mr. Bonillas?

A. I did. I showed them the old walls and ruins and the ruins of corrals where sheep were kept.

Q. And that place that you pointed out to them is the place you have always known as the meadow of Guebabi, is it?

A. Yes, sir; that is the one I have always known.

Q. Do you know where the place called the Vado Seco is?

A. I do.

Q. Did you point out that place to Mr. Cameron and Mr. Bonillas on this same trip?

A. I did. I showed him where the Vado was.

Q. The Vado Seco which you pointed out to them is the place you have always known as the Vado Seco?

A. For many years; from the time I was a young man thirteen or fourteen years old in going over to Santa Cruz with my parents.

Q. You pass by there on the regular traveled road to Santa Cruz, don't you?

A. Yes, sir; I have gone by there many times.

Q. Do you know a place called Yerba Buena?

A. That is above the Vado Seco.

Q. How long have you known that place as the Yerba Buena?

A. For many years. I was about probably fourteen years old when I knew it.

Q. Is that on the trail to Santa Cruz also?

A. On the same road.

Q. Did not you point out that place to Mr. Cameron and Mr. Bonillas as the Yerba Buena?

A. Yes, sir; I did.

Q. Don't you know where the Vado del Apache is?

A. I do.

Q. How long have you known that place as the Vado del Apache?

A. For many years. I was fourteen years old at the time.

105 Q. Is that on the trail to Santa Cruz?

A. Above the Yerba Buena, on the same trail.

Q. Did you point that out to Mr. Cameron and Mr. Bonillas?

A. Yes, sir.

Q. Do you know the Cienega Grande of the Potrero?

A. I do.

Q. How long have you known that place by that name?

A. From the time I came to age of reason; when I arrived at the age when I could pronounce the names, to mention them.

Q. Is that the same place generally known by that name?

A. Yes, sir; the Cienega of the Potero.

Q. Are all these places known by the names which I have just given them?

A. Yes; north and south of those places there are other places, other names.

Q. Did you point out to Mr. Bonillas and Mr. Cameron the Cienega Grande of the Potrero?

A. I did.

Q. Now, do you mean to say that you know the exact time that Frederico Hulseman went into Calabasas?

A. Yes, sir; I do know.

Q. Were you there when he went in there?

A. Federico?

Q. Yes.

A. I do know the Frederico I refer to is the man that Gandara had there with stock as administrator.

Q. Yes. Were you there when he came there?

A. I was not there when he went there, but I went there many times when he was there.

Q. But you do not mean to say that you know when he came there, the exact time that he came there, do you?

A. Yes, sir.

Q. How do you know when he came there?

A. Because I went there in those same years.

Q. Did you go through there every year of your life?

A. Yes, sir.

106 Q. Every year?

A. Not every year, but different times.

Q. You don't know exactly what time he came in there, do you?

A. I do know.

Q. Did you see him come in?

A. I saw him when he was in possession of the ranch. I didn't see him when he went in.

Q. When was the first time when you saw him in possession?

A. In 1852 or 1853 and 1854.

Q. Now, do you know which year it was? Did you see him there in 1852?

A. About 1852.

Q. You don't know exactly, do you?

A. I don't remember the date; it was in 1852 and 1853 and 1854.

Q. In all those years you saw him there?

A. Yes, sir.

Adjourned until 10 o'clock tomorrow morning.

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TUESDAY, *March 26th*, 1895—at 10 a. m.

Continuation of trial pursuant to adjournment.

JOSE MARIA ELIAS recalled :

By Mr. HENEY: During the recess I have had my attention called to three or four serious errors made in the interpretation of the answers of the witness. I am told this by gentlemen highly educated in the Spanish or Mexican language. I am satisfied they are not due to any intention, but I suggest that the interpreter should be more careful. I am told that where the witness said "two or three years" it was interpreted "twelve or or fourteen years," but I am told the Spanish for these words is very similar.

By the COURT: Very well; make your corrections.

Q. How long after the surveyors told you about this monument or how long after you heard the surveyors talking about the monument at San Xavier was it until you went to the place and identified the place yourself where the monument was?

A. Two or three years.

Q. Now, another thing. I tried to get you (the interpreter) to put it to him whether he was positive about 1851, and he now says he never understood that question to be put that way. Now, put it to him literally as I ask it. I do not mean this as a lecture, but I wish to have it certain. Are you positive as to the time that Frederico Hulseman first came to Calabsas?

A. I am not certain about the day nor the month, but in the year 1852, when I went from here to Magdalena, in passing by there and when I came back again in the same year he was already there.

Q. Do you know positively whether he was there in 1851 or not?

A. I do not.

108 Cross-examination.

By Mr. REYNOLDS:

Q. You say it was about two or three years after you had heard the surveyors talking about this north monument that you went down here and identified it?

A. I didn't go there to search for it. In traveling by that place I found the place that they had mentioned in their conversation.

Q. At that time, two or three years afterwards, there wasn't anybody living there?

A. Do you mean Tubac?

Q. No; I mean Calabasas; when you say you saw that monument, two or three years after this conversation?

A. No, sir.

Q. Indians were living at Tubac, were they not?

A. They were not.

Q. In other words, the place was deserted, wasn't it?

A. Yes, sir.

CHARLES D. POSTON, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct -amination.

By Mr. HENEY:

Q. Where do you reside?

A. In Phoenix, Maricopa county, Arizona.

Q. How old are you?

A. Seventy next April.

Q. When did you first come to Arizona?

A. In January, 1854.

Q. By what route did you come?

A. San Francisco to Guaymas, and the rest of it by land.

Q. What part of Arizona did you enter?

A. West of the Baboquivari range; from there to the Gila river and Yuma and San Francisco.

Q. Were you ever at Calabasas in those early days; and, if so, when?

A. Two years later—1856.

Q. What was the occasion of your going there then?

A. I came overland from New York to New Orleans, and
109 from there to Texas, and from there to El Paso, and from
there to Tucson, with a company called the Sonora Explor-
ing and Mining Company. The object was to explore the country
for mines, and I went to Calabasas on that business.

Q. Don you remember what time in the year 1856 it was that you reached Calabasas?

A. In the autumn.

Q. Was anybody living in Calabasas when you got there?

A. The place had been broken up by the Apaches.

Q. Was any one living there?

A. Not at Calabasas, but at Tumacacori, this side.

Q. Who was living at Tumacacori?

A. Fritz Jensen, Theodore Morhman, and a German named Charlie; I have forgotten his name. Hunthausen had been there and Hulseman had been there, but they were not there at that moment.

Q. How long did you remain in the vicinity?

A. The headquarters of the company was at the old presidio of Tubac. I remained there from September, 1856, with an occasional absence, until 1858. I was absent in New York about a year and returned in 1859 and remained until 1861.

Q. Do you know the old church of Tumacacori?

A. I have been there a great many times.

Q. Can you tell whether or not that is the one you refer to?

A. This is a photograph of it (referring to photograph exhibited to him).

Q. How close were those men farming to this church?

A. They lived in the church and were farming within a few hundred yards of it.

Q. Have you any idea how old that church is?

A. I have very often read it in the books, but from present memory I don't think I can state exactly. It is matter of record and history in books, but I do not now remember distinctly how old it is.

110 Q. At that time did it bear any evidences of age?

A. It had been nearly destroyed by raids of Apaches and bore evidences of neglect and decay. Those three or four Germans here were not capable of keeping it in repair, and it was gradually going to decay.

Q. During the time that you remained there, or up to the time that you left, had any of those men you mentioned left there?

A. One of them came to live with me—Theodore Morhman. I took him into the company. Afterwards Fritz Jensen came to live with me at Tubac.

Q. When did Morhman go to live with you?

A. He came to live with me early in 1857, in January, I think.

Q. And when did the other one come?

A. Later, some time in the summer.

Q. And up to that time they lived at Tumacacori?

A. Tumacacori.

Q. Did the other men remain at Tumacacori?

A. He returned there afterwards, Jensen did, with Charlie.

Q. When was that, do you remember?

A. Some time in 1858.

Q. And after you returned in 1859, was there any one living at Tumacacori?

A. They were there.

Q. Did they continue to live there while you remained at Tubac?

A. Yes, sir, and afterwards. After I went away they remained at Tumacacori.

Q. After 1861?

A. Yes, sir—that is, to the best of my knowledge and belief—information.

Q. Do you know from whom they rented the land?

A. From Gandara.

Q. You mean Governor Gandara?

A. Yes, sir; they had a colonization grant or a contract.

Q. With him?

A. Yes, sir; he furnished them sheep and instruments of husbandry and provisions for a German colony.

Q. Did you see any sheep there?

- 111 A. They were gone before I came.
 Q. Do you know what became of the sheep?
 A. The Apaches took them.

Cross-examination.

By Mr. REYNOLDS :

Q. Colonel Poston, from your examination historically and general information you have acquired by being in that country, when was that Tumacacori and Calabasas mission abandoned by the Indians, do you remember?

A. When was it abandoned by who?

Q. As a mission.

A. Abandoned as a mission?

Q. Yes, sir.

A. I don't know as I can state. To the best of my knowledge and belief, previous to 1850. The colonists were not there until subsequent to 1850.

Q. I will call your attention to the historical fact; wasn't it alleged to have been abandoned about 1820?

A. That is matter of dim tradition and history and I have no means of knowing. The German colonists were not there until subsequent to 1850, and it was abandoned previous to that time, but for how long I can't say.

Q. Was not the old Tumacacori church historically alleged to have been first built in 1752?

A. That is the record from the church.

Q. Now, you have been coming and going to Tucson and down to that country and been over that country a great deal since you came to this country?

A. A great many times.

Q. Do you know where the Cerro San Cayetano is?

By Mr. HENEY: That is not cross-examination; but I have no objection to their making Colonel Poston their own witness on that point.

By Mr. REYNOLDS: I will make him my own witness for this purpose to save recalling him.

A. The mountain of that name?

Q. I mean what is commonly called the Cerro San Cayetano.

112 A. It is southeast of the old mission of Tumacacori.

Q. And how from Calabasas?

A. It would be northwest.

Q. Now, have you ever had occasion to see whether or not you can see that point from here?

A. From here? No; the Santa Rita mountains intervene.

Q. What do you call this range of mountains that you see here, lying down directly south down the valley?

A. The two peaks?

Q. Yes; the pointed peak way below there.

A. That is the Picacho Diablo, the extreme western point, and the two peaks of the Santa Ritas.

Q. Which is the peak of the Santa Ritas?

A. The two peaks.

Q. Is the San Cayetano the peak of any ridge?

A. It is beyond; not visible from here.

Q. I want you to take a look afterwards and see if you can see it and identify it. Did you ever know of any other Cerro San Cayetano?

A. None; I never heard of any other.

Q. Which side of the Sonoita creek is the Cerro San Cayetano you speak of?

A. On the west.

By Mr. HENEY:

Q. Are you familiar with the Spanish language?

A. Not familiar with it, but somewhat acquainted with it.

Q. Just talk it a little?

A. A little, but not familiar with it.

Q. This mountain you speak of is north of Calababs?

A. Northwest of Calabsas. By Calabasas I mean the house.

Q. The old ruin—the old house there?

A. Yes.

Q. Then there is the town of Calabsas, which is a modern institution?

A. A so-called town.

Q. In what direction from the old ruins of Calabasas and about how far?

A. Southeast, I think. I am not quite familiar with the new town.

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PETER R. BRADY recalled for further direct examination.

By Mr. HENEY:

Q. When you first went to Calabasas did you see any sheep on the ranch of Calabsas?

A. I did.

Q. About how many?

A. Well, I should judge about six thousand head.

Q. Did you at that time witness any fight between the Indians and the people of Calabasas or the soldiers?

A. I did.

Q. Will you relate when it was and what took place?

A. It was in the month of April, 1854. The exact date I do not recollect. The Apaches had met us the previous day, or we had overtaken them on the road, on their trail. We had been following them, and there come up a storm of snow and hail, and they left us alone, didn't bother us much, and said they were on the way down to attack the ranch of Calabasas and take the sheep away from there. Of course, we didn't know the distance at that time, but they told us it was about half a day's ordinary travel.

Q. You talked with them, did you?

A. I talked with them through a captured Mexican; talked with their chief. We saw them first, and they did not attack us. It come on evening, and the snow got a little troublesome to travel in, and we had to camp about an hour or two before sunset. A few of the Indians followed us. We could see them at a distance, but they did not annoy us that night, and the next morning we came down to the Sonoita wash, and we suddenly came upon a band of tame Apaches (Mansers), and they run away from us, but we induced them to come back. Some of them had on soldiers' overcoats, and we could see right away that they were different from the ones we

114 had seen the day before and had talked with, and the com-
mandante of the presidio from Tucson came up with his company of dragoons, and the first question he asked us was if we had seen the Indians. We told him that we had; that there was a large band of them behind us coming on, and that they would be there before long. They then invited us to go to the ranch of Calabasas, and we went a mile or two above, and while we were going the commotion commenced. The Mexican troops were all mounted, and there was a little valley close by, and the herders began to drive the sheep up to shut them up, and about one hundred and eighty Cayotero Apaches come up on them, and the Mexican troops met them at the corner of the buildings, and the Indians were very poorly armed with bows and arrows, and the Mexicans were not much better. All they had was lances and some guns, and they put the Indians to flight immediately and killed a great many of them; it was a regular slaughter. We were invited to remain there several days and recuperate, by Mr. Hulseman. We were out of everything, especially flour, and we remained several days with them and got some flour and recuperated there.

Q. What was the condition of the country with reference to the Apaches in 1854 and 1855—first, were the Mexican troops still in possession here in Tucson at that time?

A. They were; and remained all that year, until December.

Q. Of 1854?

A. Of 1854. They never left here until Christmas eve, 1854, when they pulled down the Mexican colors on the plaza and marched out.

Q. Were there any Mexican troops in Tubac at that time?

A. None.

Q. Was there any settlement at Tubac at that time?

A. None. There was only the one settlement at Calabsas under Hulseman, and the three Germans I spoke of at Tumacacori, outside of the walled garrison at Tucson; no other Europeans or Mexicans.

Q. In the whole Territory?

A. Yes, sir.

115 Q. What was that due to?

A. Apache raids, I suppose. We passed through a great many abandoned ranches on the San Pedro and Babacomori. There was nothing but desolation and ruin.

Q. What was the custom of Apaches with reference to attacking parties in the vicinity of Tucson?

A. It was dangerous to go outside of the limits of the town, almost. They killed people within a mile of town here years afterwards. Property or life was not safe anywhere outside of the walled garrison of Tucson.

Cross-examination.

By Mr. BARNES:

Q. I will make the witness our own, for this purpose. Q. Do you know the peak Serro San Cayetano?

A. I do.

Q. What direction is that from the village of Calabasas, you speak of?

A. I never paid particular attention, but from the general course of the Santa Cruz river it is about northwest.

Q. On which side of the Sonoita?

A. It is this side of the Sonoita; west of it.

Q. North and west of it?

A. West of the Sonoita gulch.

By Mr. HENEY:

Q. Are you familiar with the Spanish language?

A. Tolerably so.

Q. In speaking of the word cerro, don't they apply the word "cerro" to a "hill," and the word "montaña" to a "mountain," and the word "loma" to a "small hill" or "hillock"?

A. They apply "cerro" to "a small-sized mountain" or "a large-sized hill." They never use the word "montaña" except for a range. They only apply that to a chain of mountains. "Loma" they call a "hill," and "lomita" a "small hill." The San Cayetano they would call that the same as the "Cerro Colorado," a low chain of lomas—rolling—the same as these hills in front of Tucson, Cerro Amole.

JESUS NUÑEZ, a witness called and sworn on behalf of the petitioner, testified through the medium of the official interpreter as follows:

By Mr. HENEY:

Q. Where do you reside?

A. San Xavier, Los Reales.

Q. Are you a Mexican citizen?

A. I was born and raised in the Mission.

Q. Of San Xavier?

A. Yes, sir.

Q. Were you ever in the Mexican army?

A. Yes, sir.

Q. What year?

A. I don't remember the years.

Q. Do you know where Old Calabasas is?

A. Yes, sir.

Q. Were you ever there?

A. I was.

Q. Were you ever a soldier in the Mexican army?

A. I was a soldier.

Q. When were you first at Old Calabasas?

A. I don't remember, but I was there two or three times before the business was changed over to Sonora—that is, the troops were changed over to Sonora.

Q. Who was living there at the time?

A. Don Frederico.

Q. Anybody else?

A. And John Clark and another Frenchman whose name I do not know.

Q. Did they have any men working for them?

A. They had many.

Q. And whereabouts were they living; where were the houses in which they were living?

A. They were at the pueblo above the ranch, and they were all over. They had very many sheep.

Q. Do you remember an occasion of a fight with the Apaches at Calabasas when the Mexican troops went there from Tucson?

A. Yes, sir.

Q. Were you with those troops?

A. I was here.

Q. Were you with those troops; did you go with the troops?

117 A. I went with the troops.

Q. As a soldier?

A. As a soldier.

Q. State where that fight took place.

A. It was at an open place from Calabsas; there is the place where we fought. We met at the ranch, and we drove them down to this open place.

Q. Did he say near the Sonoita (to the interpreter)?

A. No, sir. From the ranch there is an open place or cañada, and — is where the battle occurred.

Q. Did you find anybody living at Old Calabsas there then?

A. Yes, sir.

Q. Who?

A. Don Frederico and John Clark and another man by the name Juan also, and a Frenchman; I don't know his name.

Q. Did you see any sheep there?

A. Very many.

Q. How long before that was it that you had first been there?

A. I had been there four or five times. The sheep that they had there they had from Tumacacori up to the Agua Fria scattered between those places. They had the ranches for the stock there.

Q. Do you know where the Cienega Grande of the Potrero is?

A. I do.

Q. Did they have any corrals there?

- A. Yes, sir; very many.
- Q. Do you know where the Guebabi is?
- A. I do.
- Q. Did they have any corrals there?
- A. They had corrals and cultivated lands.
- Q. Do you know where the Yerba Buena is?
- A. I do.
- Q. Did they have any sheep there?
- A. Yes, sir; a few; but they had some.
- Q. Do you know where Tumacacori is?
- A. I know it well.
- Q. Where the old church is?
- A. I do.
- Q. Did they have sheep there?
- A. They had.
- 118 Q. Who did those sheep belong to and who were they working for, if you know?
- A. They were for Manuel Maria Gaudara.
- Q. Do you know what become of those sheep or any of them?
- A. I know a portion of it that we ate up and the men gave to soldiers some of them.
- Q. Who gave them to you?
- A. Pisquera.
- Q. Who was Pisquera?
- A. Probably he was governor of the State—the commandant general.
- Q. Where were the sheep when Pisquera took possession of them?
- A. They were at Calabsas and drove them to Imurez and there he took them.
- Q. How did he take them?
- A. I don't know.
- Q. Did he use the soldiers to take them with?
- A. He gave them to the soldiers to eat. I don't know who drove them away.
- Q. Are there any other soldiers here in the room who were with you in that fight with the Apaches?
- A. What fight?
- Q. With the Apaches there at Calabsas.
- A. Yes; there are three, I think, in this room—four.
- Q. What are their names?
- A. Jose Maria Asero, Jose Rodriguez, Antonio Ramirez, and I think Concepcion Elias also, but I am not certain about him.

Cross-examination.

By Mr. REYNOLDS:

- Q. Do you know what year it was that Pisquera took those sheep away from there?
- A. I don't know. I am very ignorant of those matters and I do not know whether it was in 1855, when we delivered this line up. (By the interpreter: He means the boundary line.)

Q. Was it about that time ?

A. Yes, sir.

Q. Did you see Pisquera there himself?

A. I didn't see him.

119 Q. Did you ever see him?

A. Many times.

Q. Then he was not there at the time these sheep were taken away?

A. No, sir; I don't know. I was a soldier at that time and employed on my own business.

Q. But you say Pisquera was not there in person?

A. No; I didn't see him.

Q. He was down in Sonora, wasn't he?

A. He was in Sonora.

Q. How do you know that he took these sheep away from there? Why do you say he did?

A. I knew it from the commandant of the presidio, Hilario Garcia Gomez.

Q. Was Pisquera governor then?

A. Yes, sir.

Q. Was not Gandara governor at that time?

A. No; he had left the country.

Redirect examination:

Q. How long before the American troops came in did you see Hulseman at Calabasas?

A. Don Frederico?

Q. Yes.

A. I saw him three or four times. I saw him every time I went through to Santa Cruz from here.

Q. How long before the troops came in was the first time you ever saw him—how many years before?

A. I think I saw him two or three years—I don't remember.

CONCEPCION ELIAS, a witness called and sworn on behalf of the petitioner-, testified through the medium of the official Spanish interpreter as follows:

Direct examination.

By Mr. HENEY:

Q. Where do you reside?

A. In Santa Cruz.

120 Q. That is in Mexico?

A. Yes, sir; on the edge of the line.

Q. How long have you lived there?

A. I was born there; that is my country.

Q. How old are you?

A. I am sixty-four years old.

Q. Do you know the old trail from Santa Cruz to the San Xavier mission going to Tucson?

A. Yes, sir.

- Q. When was the first time you traveled over that trail?
A. I traveled since I was ten years old.
Q. Many times?
A. Yes, sir.
Q. Do you know where the place of Yerba Buena is on that trail?
A. I do.
Q. Do you know where the Vado del Apache is on that trail?
A. Also.
Q. In what direction is the Vado del Apache from the Yerba Buena?
A. It is north—to the north.
Q. Do you know the place called the Vado Seco on that trail—close to the trail?
A. I do.
Q. In what direction is the Vado Seco from the Yerba Buena?
A. It is to the north, with the difference that the river makes a bend.
Q. And it is down the river, is it?
A. Yes, sir; down the river.
Q. Do you know a place called the Old Guebabi on that trail?
A. Yes; I know Guebabi.
Q. Do you know the ruins of Guebabi?
A. I do.
Q. In what direction is that from the Vado Seco?
A. It is to the north—below the river.
Q. Do you know the meadow of Guebabi?
A. Yes, sir; that was the old trail we used to travel over.
Q. Where is that meadow from the old ruins of Guebabi?
A. It is towards the direction of the setting sun, and the old houses are on top of a mesa.
121 Q. Do you mean the bed of the river by the "meadow"?
A. Yes, sir; the place through which the river runs.
Q. Do you know where Old Calabasas is?
A. Yes, sir.
Q. In what direction is that from Guebabi?
A. It is also below the river—down the river.
Q. Do you know where the old mission of Tumacacori is?
A. Yes, sir.
Q. And in what direction is that from Old Calabasas?
A. It is also down the river, to the west side of the river.
Q. (Handing witness photograph marked "C.") Do you recognize that photograph?
A. Is not that picture of Calabasas or Tumacacori?
Q. What do you think about it?
A. I don't know.
Q. (Handing witness another photograph marked "D.")
A. I don't remember it.
Q. When were you at Tumacacori last?
A. At the time of Pisquera, during the time of the French invasion in Mexico, when Pisquera came fleeing up to Tumacacori.
Q. That was the last time you were in Tumacacori?

A. Yes, sir. I have passed by there other times afterwards, but I haven't arrived at the place.

Q. In what year was the first time that you passed by Calabasas?

A. When eight or ten years —, because my father's family belonged to this place and we would come here to the Fiestas of San Augustin, to spend them here.

Q. When you first passed by Calabasas was there anybody living there that you remember?

A. It was settled, but I don't know by whom.

Q. Who did you see living there?

A. I don't remember. I saw people there, but I don't remember who, because we would pass up and down only.

Q. Did you know Frederico Hulseman?

A. Yes; I knew him when I was already a man—already a soldier.

Q. Did you ever see him at Calabasas?

A. Yes, sir.

122 Q. Do you remember the year you first saw him there?

A. Yes, sir. I think it was 1852. The place was settled by that man Frederico.

Q. Who was there at that time?

A. That man Frederico and some sheep belonging to Mr. Gandara.

Q. Did they have any men there working for them?

A. Yes, sir.

Q. How many?

A. They cultivated the lands. There was some herders. There was some little cultivated patches there.

Q. About how many men did you see there?

A. I think there were about forty among families and working men.

Q. How many sheep did you see?

A. I saw them, and they said there were about four or five thousand. I did not count them.

Q. Did you see any sheep at Tumacacori?

A. No; I did not.

Q. Did you see anybody farming there?

A. Yes; some people from Tubac by the name of Yrigoya.

Q. Did you know Antonio Gandara and Francisco or Pancho Grandara?

A. I know them all.

Q. Did you ever see Antonio Gandara and Francisco Gandara at Calabasas?

A. Yes, sir; I saw them all.

Q. Do you remember what year you saw them there?

A. I don't remember whether it was in 1854 or 1853, but it was about that time.

Cross-examination.

By Mr. REYNOLDS:

Q. What direction is the Vado del Apache from the Yerba Buena?

A. It is to the north. Where the river runs by it is to the west.

Q. What direction is the Vado Seco from the Yerba Buena?

A. To the north.

Q. Which side of the Santa Cruz river is the Vado Seco?

A. From the Santa Cruz in this direction (pointing to the west).

123 Q. In what direction are the ruins of the Guebabi mission from the Vado Seco?

A. It is always towards the north—towards the west side near the hills.

Q. How close are the ruins of Guebabi to the river of Santa Cruz?

A. I don't remember; it might be ten leagues at the least.

Q. He does not understand the question. How close are the ruins of the Guebabi to the Santa Cruz river?

A. The river comes turning around in this fashion (indicating curve), and the town lies in this position.

Q. Is it close to it or some little distance from it?

A. They are near. The distance from the ruins to the river may be two or three hundred varas, unless the river has changed its course.

Q. You say you know where the Cienega Grande is?

A. What Cienega Grande do you mean?

Q. The one about which you testified awhile ago.

A. I don't know which cienega that is.

Q. Of the potrero, then?

A. I do.

Q. When you speak of the Cienega Grande of the potrero do you mean the valley lands of the potrero?

A. We call potrero another thing. The place we call a potrero is where the road goes in towards Imurez from Calabasas.

Q. What direction is the potrero from the ruins of Guebabi mission?

A. In this direction. (By the interpreter: He points towards the northwest.)

Q. You know what is east, north and south and west, don't you?

A. Yes, sir.

Q. Well, is it east, west, north, or south?

A. Between the north and the west.

124 Redirect examination:

Q. Who used to work at the place you call the Potrero? Who farmed there, if you know?

A. I didn't see anybody farming there until I saw Kitchen?

Q. Pete Kitchen, do you mean?

A. Pedro Kitchen; I saw him settle on that place.

Q. Do you know the old Pete Kitchen ranch-house?

A. I knew it from the time it was settled there at the Potrero; I don't know whether it is there now or not.

Q. Where is the Potrero from that Pete Kitchen house? Where is the Cienega Grande of the Potrero from that house?

A. The cienega was on this side and the house was on the other side—that is, the house that I was acquainted with.

Q. Please explain what you mean by "this side" and "the other side."

A. From the cienega the house was to the west; the house was to the west from the cienega.

Q. What do you mean by "Vado Seco"?

A. That was name of the Vado Seco; it was a very old name.

Q. Describe that vado seco—where it is?

A. Now, do you mean?

Q. Where is it with reference to the river?

A. That place is where the water of the river sank down and then resumed further down below; that is the reason why they call it the Vado Seco, because there was no water there.

Q. Is that where they crossed the river?

A. Yes, sir; that was the highroad.

Q. What river is that you are speaking of?

A. This same river—the Santa Cruz.

125 RUSK GREEN, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination.

By Mr. HENEY:

Q. Mr. Green, where do you live?

A. I live at Tucson.

Q. How old are you?

A. Sixty-seven.

Q. When did you first come to Arizona?

A. I first was in Arizona in 1854.

Q. Do you remember the month?

A. Yes, sir.

Q. What month?

A. The month of November.

Q. Had the Mexican troops left this part of the country?

A. No, sir.

Q. Did you at that time visit Calabasas?

A. Yes, sir; I was camped on the Calabasas ranch.

Q. Who did you find there, if any one?

A. I found a man there by the name of John Clark and a man by the name of John Davis, and a Frenchman or German; I forget his name.

Q. Chambon?

A. I believe that is the name. I am not positive of the name,

but I know he was a Frenchman or a German, but I did not get acquainted with him, but with Clark and Davis.

Q. Did you know Frederico Hulseman?

A. Yes, sir.

Q. Was he there?

A. He wasn't there at the time I was there first.

Q. Did you see him there afterwards?

A. Yes, sir.

Q. What were those men doing there?

A. They were in charge of the property there and farming a little.

Q. For whom were they in charge?

A. Well, I was informed by the parties that they were in charge by Mr. Gandara.

126 Q. Did they tell you that at that time?

A. Yes, sir.

Q. You mean Governor Gandara?

A. Yes, sir; Governor Gandara, of Sonora.

Q. How long did you remain there at that time?

A. Two days.

Q. Did you return there at any other time?

A. I returned there in 1855.

Q. Who was there then?

A. John Clark.

Q. Any one else?

A. No, sir.

Q. What was John Clark doing?

A. He was in charge of the property that was enclosed in the old buildings—the furniture and groceries and blankets and so on.

Q. Did he tell you who he was in charge for then?

A. Yes, sir.

Q. Who?

A. Governor Gandara.

Q. What was the condition of the country at that time with reference to Indians?

A. The condition was it was almost universally in possession of the Indians.

Q. Was there anybody living at Tubac then?

A. No, sir.

Q. How long did you remain there, then, in 1855, when you went to Calabasas?

A. I was living here in Tucson.

Q. How long did you remain in Calabasas at that time?

A. I only went on business with Mr. Clark.

Q. What was the condition of the country in regard to Indians in the vicinity of Tucson?

A. It was very dangerous—very bad.

Q. How close to the town did the Indians come?

A. They used to walk through the streets—that is, where the streets are now.

Q. Was it safe to go out as far as Stone avenue at that time?

A. Not very well, unless you were well heeled and a very good shot.

Q. And where was the old town?

A. The old town was enclosed in a little adobe corral there.

Q. Over here where the church plaza is?

127 A. Yes, sir; there were the corrals and buildings of the government.

Q. Did you know of any fights taking place within the limits of the present town?

A. Not right at that time; just a few days before I got here there was a three days' fight.

Q. With the Apaches?

A. Yes, sir.

Q. How long after that did that condition of affairs with the Indians continue?

A. Well, that condition of affairs continued until after the raid of General Crook.

Q. What year was that in?

A. I think that was in 1872 and 1873.

Q. Do you know how long Clark remained at Calabasas?

A. He remained at Calabasas until 1856. I last saw him in Calabasas in March, 1856.

Q. Did you after that become pretty well acquainted with Clark?

A. We were intimate friends. I mined with him for years.

Q. Do you know what become of him?

A. Yes, sir.

Q. What?

A. He died in Globe.

Q. When?

A. On the 7th of this month, I learned by letter.

Q. Did you know Antonio and Francisco Gandara?

A. I did, sir.

Q. Did you ever see either of them in Tucson?

A. I saw all three of them.

Q. You mean the father, Manuel Maria Gandara, and the two boys?

A. Yes, sir.

Q. Do you remember about what years?

A. I saw them here first in 1856, I think, or 1857.

Q. And when did you see them after that?

A. I saw them in 1864.

Q. Do you know whether any of them were living in Calabasas in 1864?

A. Not personally, I do not.

Q. What was your business at that time?

A. Keeping hotel.

Q. Here in Tucson?

A. Yes, sir.

Q. Did any of them stop at your hotel during that time?

A. Yes, sir.

128 Q. Which ones?

A. Antonio and Francisco, both.

Q. Where did you understand they were living at that time?

A. They told me themselves they were on the Calabasas ranch.

Q. And would they go in and out and stop at your hotel in town?

A. They stopped there two or three times.

Cross-examination.

By Mr. REYNOLDS:

Q. They lived in Sonora, didn't they?

A. They did when I first knew them.

Q. Didn't they always live there?

A. No; not always; not when they were living here in Tucson and around here.

Q. Did they ever live with their families in Tucson?

A. Well, no, sir; the old man Gandara never had any family in Tucson.

Q. Did either one of the other two?

A. I never knew either one of them was married; they were both single men when I knew them.

Q. They came and went out of the country and didn't stay there long at a time?

A. They were here a couple of years one time that I know of.

Q. Was that 1854?

A. Along 1854 and 1856—along during the late war.

By Mr. HENY:

Q. 1854, do you mean?

A. During the late war—in 1863, 1864, and 1865—that is when they were living here.

By Mr. REYNOLDS (resuming):

Q. What were they doing?

A. Carrying on a meat business.

Q. Supplying the troops with meat?

A. I think so.

Q. Do you know whether Governor Gandara was in partnership with Jesus Maria Elias for supplying the troops going into
129 New Mexico, during the late war, with meat?

A. No, sir; I don't know anything about that. I know they were butchering here for a while, but I don't know what they were doing with the meat.

Q. They were not living here before that time, were they?

A. No, sir; not till after.

Q. They were not living here before the war, were they?

A. No, sir.

Q. You understood before the war they lived in Sonora?

A. Yes, sir.

Q. When they left here they went back to Sonora, didn't they?

A. I don't know where they went.

Q. You don't?

A. I do not.

Q. What is your best impression about it now?

A. My best impression is they went from here to San Francisco; my impression was that Governor Gandara returned from here to San Francisco.

Q. When was that; about 1869, wasn't it?

A. I don't remember the date of his leaving here at all. He was in business here.

Q. Was the governor in business here outside of the meat business? Did he live here?

A. Yes, sir; he lived down here by where Charlie Etchell's blacksmith shop is.

Q. He had been run out of Mexico by Maximilian, hadn't he?

A. That was after he was driven out of Mexico, I suppose.

Q. Wasn't that about the time that he was driven out by Maximilian when he was here?

A. Somewhere about that time; yes, sir.

Q. You so understood, and everybody else, that he had been driven out of the country on account of the French?

A. I knew he was here on account of the rebellion, or supposed he was.

Q. Now, you have said the Indians were bad?

A. Yes, sir.

Q. And that was the state of affairs before you came and for some time afterwards?

A. For years afterwards.

Q. And before?

A. Yes, sir.

130 Q. In other words, this country was always dangerous and infested by Apaches until Crook came in and whipped them, as you say?

A. Yes, sir.

Q. When was it that Crook came in here? Do you remember?

A. I disremember the date of his coming in here, but I was keeping the Palace restaurant at the time when he was out on the campaign.

Q. That was in 1872 or 1873?

A. 1872.

Q. This country was quite as dangerous in 1840 and 1850 as it was in 1854, wasn't it, from Apaches?

A. I presume so, but I wasn't here at that time.

Q. Well, it was less protected at that time than it was afterwards?

A. Well, it was protected afterwards by American troops and before by Spanish troops.

Q. But the protection of the country was by the infusion of Americans coming in between 1850 and 1860?

A. I didn't see very great deal of protection from the possession by American troops, either.

Q. And there wasn't much protection against them at all, was there, when they took a notion?

A. They generally had things there own way if they took it up.

Q. You say Mexican troops were in charge of Calabasas in November, 1854, when you got there?

A. No, sir; the Mexican troops were in Tubac.

Q. Well, that was in November, 1854?

A. Yes, sir.

Q. Do you know when the Mexican flag was hauled down and the troops went back to Mexico?

A. I do not.

Q. It was after that time, wasn't it?

A. From here?

Q. Yes; and down there, too.

A. At Tubac? Pisquera came here and lifted the Mexican troops from this post in March, 1856. He came here and paid off the troops; had to pay them off to get them out of the country. They refused to go. I was here at the time selling goods. They left here in March, 1856, and he lifted the troops from Tubac as he went by.

Q. Where was Gandara at that time?

A. I suppose in Mexico.

Q. Wasn't down on his ranch, was he?

A. I don't know, indeed, whether he was. He had men there at the time, though.

Q. Who were they?

A. Mr. Clark.

Q. Any one else?

A. Not that I know.

Q. Was there any stock there?

A. Not in 1856.

Q. I believe you stated that he was there in charge of all the furniture, and so forth, stored in the house?

A. Yes, sir; goods stores in the old buildings.

By Mr. HENY: I would like the record to show that I call Peter Kitchen. I understand he is too sick to respond. He testified before the land office, and if the gentlemen are willing to let that go in I will offer that testimony.

By Mr. REYNOLDS: I am informed that he is sick, but able to testify. It is stipulated, however, that that testimony may go in as the testimony of Mr. Kitchen.

By Mr. HENY: I refer to the testimony given in the land office, which is in the report of John Wasson, surveyor general, recommending the confirmation of the rancho of Calabasas. It is at page 34 of that document.

I also want the record to show that I call Tula Herrera. I understand she is also too sick to respond.

132 The testimony of Peter Kitchen, referred to by counsel, is as follows:

"PETER KITCHEN, a witness on behalf of claimants, being duly sworn by the surveyor general, deposed as follows:

Question 1. What is your name, age, occupation, and place of residence?

Answer. My name is Peter Kitchen; age, fifty-four years; occupation, ranchero, and reside on the Potrero, near the old mission of Tumacacori.

Question 2. Were you acquainted with Governor Manuel Maria Gandara in his lifetime and with his son, Miguel Gandara?

Answer. I was.

Question 3. Are you acquainted with the rancho of Tumacacori and Las Calabasas, and do you know anything about the possession of said rancho by Governor Gandara and his son Miguel during their lives? If so, please state what you know in relation thereto.

Answer. I had known the rancho referred to since 1854. At that time Gandara had possession of the rancho. He had thereon good and substantial buildings, such as would now cost several thousand dollars. I did not see the stock, but I learned that he had stock on the rancho; at this time it was in charge of an agent of governor named John Clark.

Question 4. Do you know when and why Governor Gandara and his son Miguel abandoned the possession of the rancho?

Answer. I think that Gandara abandoned the rancho some time about the year 1855; anyway, it was about the time that the rancho was taken possession of by the United States troops. The troops occupied the houses of Gandara, and, I think, in about the year

1858 a fort was built across the creek some three hundred or 133 four hundred yards from the houses of Guebabi.

Question 5. Do you know if there are mines or minerals on the rancho referred to?

Answer. It contains minerals.

PETER KITCHEN.

Sworn to and subscribed before me this 29th day of December, 1879.

[SEAL OF OFFICE.]

JOHN WASSON,
United States Surveyor General."

FRITZ CONTZEN, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination.

By Mr. HENEY:

Q. How old are you, Mr. Contzen?

A. 64; going on 65.

Q. When did you first come to Arizona?

A. I came here in 1855.

Q. Where do you reside?

A. Here in Tucson.

Q. Do you remember the month in 1855 that you came to the country?

A. It was in August.

Q. Who did you come with?

A. Major Emory.

Q. What was he doing?

A. Surveying the line in Arizona and New Mexico.

Q. Do you mean New Mexico and Old Mexico?

A. Yes, sir.

Q. Do you know where old Calabasas is?

A. Yes, sir.

Q. At that time did you visit that place?

A. Yes, sir; we camped there six weeks.

Q. Was anybody living there at that time?

A. Yes, sir; somebody was living there.

Q. Who?

A. A man named John Clark—an American—and a German man named Henry.

134 Q. Henry Aplin?

A. Henry Alpin, I guess.

Q. Anybody else?

A. Nobody else.

Q. At what particular place at Calabsas were they living?

A. They was living right there, right on a little hill there; some adobe houses was there.

Q. Old houses?

A. Pretty good houses—adobe buildings and a corral around.

Q. At the place called Old Calabsas?

A. Yes, sir; Old Calabasas.

Q. What were they doing there, if you know?

A. They were taking care of the place for Gandara. The year before 1854 they had a fight there with the Apaches and they abandoned it.

Q. Do you know whether any one was killed on the ranch?

A. Yes; one Mexican, so I was told.

Q. Were they there when you left there?

A. Yes, sir.

Q. When did you go back there again?

A. I went back again there in 1856.

Q. Was there any one there then?

A. No; they had left then; no; 1857 it was, and they had left.

Q. At the time you first went there was there any evidence of farming?

A. Yes, sir.

Q. How much; what evidence was there of it?

A. I couldn't tell you how much, but they farmed there some.

Q. Had been farming?

A. Yes, sir; some.

Q. Do you know anything about the place in later years, after that, during the war?

A. Yes, sir; I lived here.

Q. Did you know Manuel Maria Gandara?

A. Yes, sir; I knew him well.

Q. Did you see him here at that time?

135 A. I saw him here in Tucson.

Q. In what years?

A. I saw him here in 1860.

Q. Did you see him later than that?

A. I saw him later.

Q. How late?

A. I saw him in 1864.

Q. Do you know when he left here?

A. Well, when he left here again it was when the French troops come—Maximilian. He went back again.

Q. Was it after the rebellion, the civil war of the United States, was over with?

A. Yes, sir; afterwards. The time the war was, he was here.

Q. Did you know Antonio and Francisco Gandara, his sons?

A. Very well.

Q. Did you see them here?

A. Yes, sir.

Q. Do you know where they were living?

A. They was living here in Tucson, and afterwards, I believe in 1864, they farmed again in Calabasas. In 1860 Gandara came up here; he was governor and Pisquera drove him out of Sonora.

Cross-examination.

By Mr. REYNOLDS:

Q. Do you remember when Maximilian went to Mexico?

A. I guess it was about 1862 or something of that kind; I don't know.

Q. Do you remember when he was killed?

A. Yes, sir.

Q. Do you know the date, the day of year?

A. I don't recollect, but I guess about 1865.

Q. Wasn't it 1867?

A. 1867, maybe it was.

Q. During that time Gandara was in sympathy with that government, wasn't he?

A. Yes, sir; he was in favor of Maximilian.

Q. And during that time from 1862 to 1867, when Maximilian reigned in Mexico, Gandara was governor of Sonora?

136 A. Not then. Pisquera was governor of Sonora, but afterwards the French troops came and Pisquera came over the line.

Q. The French troops run Pisquera out?

A. Yes, sir.

Q. But Gandara stayed?

A. Yes, sir; he stayed there.

Q. When Pisquera was run out, wasn't Gandara made governor?

A. No, sir.

Q. Who was?

A. I couldn't tell you. I guess he was never governor any more. I heard he went to San Francisco and died—Gandara.

Q. When was that?

A. Couldn't tell you.

Q. About 1869?

A. About that. I couldn't tell you.

Q. 1866?

A. Maybe so; I couldn't say exactly the year. Antonio Gandara died here; he was shot by the Indians and died in my arms.

Q. In what year?

A. That was in 1862. Pancho went to Calabasas and farmed in 1864.

By Mr. HENEY:

Q. By "Pancho" you mean Francisco?

A. Yes, sir; that is Francisco. He had another brother named Miguel. I was very well acquainted with the Gandaras.

By Mr. REYNOLDS (resuming):

Q. How much farming do you say was done down there?

A. I couldn't tell you exactly; a good deal, I guess; but they stopped there. I was acquainted with Hulseman afterwards.

Q. Did they cultivate as much as a hundred and sixty acres of land?

A. I guess so.

Q. As much as six hundred and forty?

A. I guess one hundred and sixty acres, or something like that. They were going to make a hacienda there like in Sonora. They were making blankets there and so on.

Q. How much land was cultivated around over Calabasas?

A. I could not tell you that exactly.

137 Q. You saw some evidences of cultivation; you saw some farming done?

A. Yes, sir.

Q. You used the term farming as you know it was used here in that day?

A. Yes, sir.

Q. And you don't mean to use the word farming as it is used back in Iowa and as you saw it before you came out here?

A. No, sir; I couldn't tell you how big farming it was.

By Mr. HENEY: I wish the record to show that I call Theodora Hulseman.

Figueroa, and that she has refused to obey the subpœna. The return on the subpœna shows that she has been properly served. She is the daughter of Frederico Hulseman and her testimony would be the same as I have already introduced. I have quite a number of other witnesses on the same point, if the court cares for me to go on. Whenever the court is satisfied on the question of possession, I will stop.

By the COURT: You may proceed as you think best.

ANTONIO RAMIREZ, a witness called and sworn on behalf of the petitioner-, testified through the medium of the official interpreter as follows:

Direct examination.

By Mr. HENNEY:

Q. How long have you lived in Arizona?

A. I was born and raised here.

Q. Were you ever in Calabasas?

A. I haven't been there, but I have passed through once.

Q. When?

A. In 1854.

Q. Was anybody living there at that time?

A. I don't remember. I knew from other persons that there were some people living there.

By Mr. HENNEY: If the witness does not remember I will
138 not examine him further.

JOSE MARIA PERALTA, a witness called and sworn on behalf of the petitioners, testified through the medium of the official interpreter:

Direct examination.

By Mr. HENNEY:

Q. Where were you born?

A. In Tubac.

Q. How old are you?

A. Sixty-two years.

Q. Do you know where old Calabasas is?

A. Yes, sir.

Q. Do you know where the old Tumacacori church is?

A. Yes, sir.

Q. How far is that from Tubac?

A. About three or four miles.

Q. In what direction?

A. To the south of Tubac.

Q. (Exhibiting photograph marked "C.") See if you recognize that.

A. That is the church of Tumacacori.

Q. When were you first at Calabasas?

A. I think the first time I was there was when I was thirteen or fourteen years old.

Q. Was anybody living there at that time?

A. I don't remember any at that time.

Q. When did you first see anybody living there after that?

A. From 1851 to 1852 I saw that place settled.

Q. Who was there then?

A. I know Don Frederico Hulseman.

Q. Any others?

A. I didn't know the names, but I knew two other persons who were with him there.

Q. How many people were there then, about?

A. I think there were thirty or forty men.

Q. What were they doing?

A. Some were employed in herding sheep and others in farming.

Q. Did you see any sheep there?

A. Yes, sir.

139 Q. How many.

A. I can't state the number because they were in different groups.

Q. Were there any sheep at Tumacacori?

A. Yes, sir.

Q. Do you know where the Cienega Grande of the Potrero is?

A. Do you mean the Potrero of Kitchen?

Q. Yes, sir.

A. Yes, sir.

Q. Were there any sheep there?

A. There were some sheep there.

Q. Do you know where the Guebabi is?

A. I do.

Q. Were there any sheep there?

A. Yes, sir.

Q. Do you know where the Yerba Buena is?

A. Yes, sir.

Q. Were there any sheep there?

A. You could see some sheep from that place to the Vado del Apache.

Q. And men with them?

A. Yes, sir.

Q. And were they farming at Guebabi?

A. Yes, sir; at Guebabi.

Q. Do you know when Frederico left there?

A. I think it was in the year 1855 when he left there. I am not certain. I wasn't here at the time. I was in the interior of the country—or in 1856.

Q. Who were these men working for?

A. I knew that they were working for Don Manuel Maria Gandara.

Q. Were you a soldier in the Mexican army in 1854?

A. Yes, sir; under Mr. Gandara.

Q. Do you remember a fight that took place at Calababsas, and did you take part in that fight?

A. As if it had occurred just now. It was in 1854, the first days of April.

Q. Were there any people at Calababsas?

A. Yes, sir.

Q. Who were they?

A. Don Frederico was there at the time. He was there as administrator, and many people also.

Q. Do you know Antonio and Francisco Gandara?

A. Yes, sir; from my early youth I knew them.

140 Q. Did you ever know them to be at Calababas?

A. Don Francisco was there, it seems to me, in 1863 and 1864.

Cross-examination.

By Mr. REYNOLDS:

Q. You never knew the Cienega Grande at the Potrero Kitchen until Pete Kitchen went there, did you?

A. I knew it before that.

Q. How did you know it before?

A. In traveling over the road—public road.

Q. Under what name did you know it then?

A. As the Potrero.

Q. The first persons you ever saw there at Calababas was when Hulseman went there, wasn't it?

A. Yes, sir.

THEODORA DE TROLL, recalled on behalf of the petitioners, testified through the medium of the official interpreter as follows:

Direct examination.

By Mr. HENRY:

Q. Do you know the place called the Cienega Grande of the Potrero?

A. I know it a little in passing through that place.

Q. At the time you first went to Calababas in 1853 were there any sheep at that place?

A. Yes, sir.

Q. And corrals?

A. No, sir; the sheep were kept in flocks there.

Q. Tell at what different places they kept the sheep—all the different places where they had flocks of sheep.

A. On the tops of the Potrero, where the mines are, and at the Divisadero of the Palo Alto, and also in the valley of the Agua Fria, and the Cañada de Sonoita, and on tops of Guebabi, and that pasture over as far as Yerba Buena.

Q. What became of the sheep?

141 A. Some of them died and some of them crossed over into California for sale when it was no longer possible to control the Indians.

Q. What caused Hulseman to leave there?

A. The Indians. The Indians having attacked the place three times and having killed many of the servants who were working there and also my stepfather, we took the sheep to Tumacacori for the reason there was a fort near by that place. We came to Tumacacori and took the sheep with us.

Q. The fort at Tubac, you mean?

A. Yes, sir; I saw it there. The commander-in-chief was Captain Gomez, and Mr. Santa Ana was captain of the company also.

Q. Did anybody remain at Calabasas after that?

A. A man by the name of John—I don't remember his other name, but it might be the one you are mentioning. He remained there. He was married to a woman from Tucson named Jesus Quintara. I suppose that is the man you have been mentioning here. The woman is dead.

Q. Under what arrangement did he remain there, if you know?

A. He remained there to take care of the ranch, that the Indians might not set fire to the property.

Q. For whom did he remain there, if you know?

A. For Don Manuel Maria Gandara.

Q. Do you know what he was paid for remaining there?

A. Yes, sir. Six hundred dollars a year, each one of them.

Q. How many were there?

A. Two.

Cross-examination.

By Mr. REYNOLDS:

Q. You think two men could keep the Indians from coming and burning up the property if they wanted to at that time?

142 A. Yes; because they were there three years and they had no quarrel with them.

Q. You say they were put there to take care of the property?

A. Yes, sir.

Q. The Indians did not molest them?

A. Sometimes they did; sometimes they took the water away from them.

Q. Didn't kill them?

A. They didn't kill them.

Recess until 2 o'clock p. m.

JOSE RODRIQUEZ, a witness called and sworn on behalf of the petitioner-, testified through the medium of the official interpreter as follows:

By Mr. HENEY:

Q. Where were you born?

A. Here.

Q. How old are you?

A. Fifty-eight.

Q. Were you ever at Calababsas?

A. Yes, sir.

Q. When were you first there?

A. The first time I was there I will tell you. As a soldier here we used to go up and down through that country. When we went away from here it was a long time after when I went to that place.

Q. Do you know Frederico Hulseman?

A. Yes; I knew him.

Q. Did you ever see him at Calabasas?

A. Yes, sir.

Q. When did you first see him there?

A. The first time I saw him was in 1852.

Q. Who was living there besides Frederico at that time?

A. A German by the name of John.

Q. Were there any men there working for them?

A. Yes, sir; there were some men.

143 Q. How many?

A. As there were some sheep there, they had, I think, about forty men, and they had some cultivated patches there, and they kept their oxen there, too.

Q. Did they manufacture anything there?

A. They farmed there and took care of the sheep there.

Q. Did you see them making anything out of the wool?

A. I did not.

Q. How many sheep did you see there?

A. They had sheep at Agua Fria and on the Sonoita. I think they had about three or four thousand. They had many sheep.

Q. Were you a soldier in the Mexican army here?

A. Yes, sir; I was, for sixteen years.

Q. Did you go down to Calabasas at the time the soldiers had the fight with the Apaches?

A. I did.

Q. What year was that in?

A. In, I think, about the year 1854.

Q. Was there anybody at Calababasas then?

A. Yes; there were about forty men.

Q. The same people that you saw in 1852?

A. You will excuse me, it was not in 1852; it was 1854 this matter took place; but as I am such a busy man my memory is gone.

Q. Do you mean the fight with the Apaches?

A. Yes, sir; I was fighting with them.

Q. Who was there at Calabasas at that time?

A. Don Frederico.

Q. Did he have a lot of men working with him then also?

A. About forty men to help, that Mr. Gandara had given him.

By Mr. REYNOLDS: We have no cross-examination.

By Mr. HENEX: I will now offer these deeds, subject to the objection as to signatures, and I will furnish proof of the signatures later on.

First I will offer the deed of 1856 from Francisco Alejandro
144 Aguilar, the original grantee mentioned in the titulo, to Manuel Maria Gandara. It is found at the end of a certified copy of the titulo of 1844. I understand this to be subject to the objection as to the signature, proof of which I will offer later. I called the attention of the court to the fact that there is a consular certificate to this and a notary public's acknowledgement upon it, with a notarial seal, and that it is dated 1856, which makes it an ancient deed. It appears to have been filed in the surveyor general's office June 9, 1864, Levi Bashford, surveyor general, by Manuel Maria Gandara, together with his petition, so that it came

from the possession of the party himself and comes within the rule as to ancient documents of this kind.

(Said document was thereupon marked Exhibit "E.")

Now I offer a deed from Aguilar, the same Francisco Alejandro Aguilar, to the same Manuel Maria Gandara, dated 1869.

(Said document was thereupon marked Exhibit "F.")

I now offer a power of attorney, Manuel Maria Gandara and Miguel Gandara to Guillermo Andrade, of San Francisco, dated Guaymas, July 1, 1876, State of Sonora. That will be subject to proof as to signature also.

(Said document was thereupon marked Exhibit "G.")

The next one is a deed from Manuel Maria Gandara, by his attorney-in-fact, Andrade, to C. P. Sykes, dated July 24, 1877.

(Said document was thereupon marked Exhibit "H.")

Next is a deed from C. P. Sykes to John Curry, dated November 26, 1878, for a part only.

(Said document was thereupon marked Exhibit "I.")

Next I offer a deed from C. P. Sykes and John Curry to the Calabasas Land and Mining Company, a corporation, dated December 18, 1879.

145 (Said document was thereupon marked Exhibit "K.")

Next I offer a deed from the Calabasas Land and Mining Company, a corporation, to the Santa Rita Land and Mining Company, a corporation, dated September 21, 1881.

(Said document was thereupon marked Exhibit "L.")

Next I offer a deed of trust from the Santa Rita Land and Mining Company, a corporation, to Solomon S. Sleeper and Edward H. Mason, trustees, dated March 1, 1886.

(Said document was thereupon marked Exhibit "M.")

Next I offer a deed from Solomon S. Sleeper and Edward H. Mason, trustees, to George B. Wilbur, William E. Putnam, Pliny Nickerson, and William A. Pearce, all of Boston, Mass., by virtue of the power of trust reposed in them, dated February 11, 1890.

(Said document was thereupon marked Exhibit "N.")

Next I offer a deed from George P. Wilbur, Pliny Nickerson, William E. Putnam, and William E. Pearce, of Boston, Mass., as trustees, to Wm. Faxon, Jr., trustee, dated May 9, 1892.

(Said document was thereupon marked Exhibit "O.")

COLIN CAMERON, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination.

By Mr. HENEY:

Q. How long have you resided in this Territory?

A. Since 1883.

Q. What time in 1883?

A. February, 1883.

Q. What is your business?

A. Rancher.

Q. Have you any interest, directly or indirectly, in the Calabasas, Tumacacori, and Guebabi land grant?

A. None.

Q. Do you know where the place called Old Calabasas is?

A. Yes, sir.

146 Q. When were you first there?

A. In September, 1883.

Q. Who, if anybody, was in possession or living there at that time?

A. At the old Calabasas ruins?

Q. Do you know where the limits, as claimed, of the Calabasas grant are?

A. Yes, sir.

Q. Who, if anybody, was living within those limits at that time?

A. There was an agent of the Santa Rita Land and Mining Company (I believe it was called that then), Mr. Williams.

Q. What are his initials?

A. W. W., I believe.

Q. Where was he living?

A. At the Potrero ranch-house. They used to call it the Kitchen ranch.

Q. Pete Kitchen ranch?

A. Yes; Pete Kitchen.

Q. Do you know C. P. Sykes?

A. Yes, sir.

Q. Was he living in that vicinity at the time?

A. I couldn't say whether I saw him or not, but his family was living in the brick hotel at the town of Calabasas.

Q. Is there a brick hotel in the town of Calabasas?

A. Yes, sir.

Q. What sized town is that?

A. It consists of a hotel.

Q. What sort of a building is it?

A. It is an elegant brick structure, built for hotel purposes. When I first saw it it had hot and cold water all through the house and marble washstands and so forth, and billiard table.

Q. Were there any stock running on the ranch at that time?

A. Yes, sir.

Q. What kind and about how many?

A. Well, I don't know. There were a good many cattle in the "83" brand.

Q. Whose brand was that?

A. The Santa Rita Land and Mining Company.

Q. Have you been on the ranch off and on from that date until this?

147 A. Yes, sir.

Q. And who, if you know, has been in possession from that time on?

A. This same company. They changed the name, but it is the same people, so far as I know. They have changed the management, but the cattle have been there.

Q. Do you know anything about how many cattle have been running there?

A. Well, that is pretty hard for a man to say.

Q. Well, a few hundred or a few thousand?

A. A few thousand cattle.

Q. Are there any improvements there that you saw?

A. Yes, sir.

Q. What kind and to what extent?

A. Well, they have got houses and corrals and fields enclosed, and pastures.

Q. Are you working for the company at this time?

A. At the present time; yes, sir.

Q. Do you know where the northern boundary of the Tumacacori land grant is claimed to be?

A. Yes, sir.

Q. And do you know all the monuments of this grant—the Tumacacori and Calabasas grant—where they are claimed to be?

A. Yes, sir.

Q. Within those limits in 1883 how many settlers were there living, to your knowledge?

A. Well, very few. In 1883 I drove cattle up and down the river and there were very few settlers there; I suppose less than half a dozen.

Q. Was that land known to be claimed as a land grant generally at that time?

A. By everybody.

Q. Do you know whether or not it had been surveyed prior to that by the surveyor general's office?

A. Not to my knowledge. I was told (interrupted)——

Q. Never mind what you were told. Take the witness.

148 Cross-examination.

By Mr. REYNOLDS:

Q. The first time you went there was in 1883?

A. Yes, sir.

Q. Were there not a good many settlers in and around the Potrero ranch, above and below it, at that time?

A. I don't think there was anybody at all there except Kitchen, and he sold out to the company.

Q. When did Kitchen sell out?

A. In 1883.

Q. Were there any settlers on that grant anywhere else?

A. Very few.

Q. Can you name some of them, Mr. Cameron?

A. There was a man named Lowe and an Italian there by the name of Jo something or other; I can't think of his name; but there were very few there. There was practically none of the country fenced up except with brush fences, at that time.

Q. Those brush fences only enclosed small fields—small patches of land?

A. Yes, sir; but there were places on the river where you could see it had been cultivated by the ridges and the old irrigating ditches there, but there was nobody there of any account at that time.

Q. You say you know what is claimed to be the northern boundary of the Calabasas grant?

A. Yes, sir; both that and the Tumacacori also.

By Mr. HENEY: I expect to recall the witness on the question of boundaries, and will make him my own witness on that point.

By Mr. REYNOLDS: Very well, then; I have nothing further to ask him now.

Redirect examination:

Q. How long have you been working for the company?

A. Since, I think, the first of May or the last of April, 1892.

149 Q. Do you know whether or not these grant lands have been assessed to the Santa Rita Company and its grantors?

A. They have been.

Q. Do you know whether or not the entire grant was assessed to them, regardless of whether occupied by settlers or not?

A. Yes, sir; I do know.

Q. Was it?

A. Yes, sir.

Recross-examination:

Q. Have they paid their taxes?

A. For some years they haven't. They assessed them more than it was worth, and they didn't pay.

Q. Do you know what years they paid?

A. They didn't pay, I believe, in 1889 and 1890 and 1891 and 1892 and 1893; 1894 they did pay, and previous to 1889 they paid.

By Mr. HENEY:

Q. They paid in all the years previous to 1889?

A. Yes, sir.

Q. On the grant, I mean?

A. Yes, sir; and paid in 1894.

WILLIAM FAXON, JUNIOR, being called and sworn on behalf of the aforesaid petitioners, testified as follows:

Direct examination.

By Mr. HENEY:

Q. You are the plaintiff in this case, aren't you?

A. I am, as trustee.

Q. Where do you reside?

A. Boston, Massachusetts.

Q. What is your business or profession?

A. I am an attorney-at-law.

Q. How long have your immediate grantors been in possession of this land? First, the company was Wilber, Nickerson, and these other men who acted as trustees—they were members of the company?

150 A. Yes, sir; and committee of the bondholders of that company.

Q. And they purchased in for the bondholders when the grant was sold out under that deed of trust?

A. They did.

Q. And now they have made you trustee?

A. They have.

Q. To take charge of the matter?

A. Yes, sir.

Q. How much money has been expended by these people upon that grant in the way of improvements?

By Mr. REYNOLDS: It is objected to as immaterial if made since the treaty.

Objection sustained.

By Mr. HENEY: We except. That is all of this witness.

By Mr. REYNOLDS: We have no cross-examination.

By Mr. HENEY: I would like the record to show that we offer to prove the expenditure of more than one hundred thousand dollars upon the lands themselves and their purchase.

By Mr. REYNOLDS: That includes the purchase price?

By Mr. HENEY: Yes, sir; and one hundred and fifty thousand dollars more in cattle which were running there and which are running there.

151 YGNACIO BONILLAS, a witness called and sworn on behalf of the petitioner-, testified as follows:

Direct examination by Mr. HENEY:

Q. Mr. Bonillas, how old are you?

A. Thirty-seven years.

Q. Where were you born?

A. I was born in the town of San Ygnacio, district of Magdalena, State of Sonora, Mexico.

Q. Are you a citizen of Mexico or of the United States?

A. I am a citizen of Mexico, sir.

Q. Where were you educated?

A. I was educated up to the time I was twelve years old in my native town and in the city of Magdalena, and from that time on my parents moved here to Arizona, and I went to the public schools here in Tucson.

Q. And after that?

A. After that I resided here some time and I was teacher in the public schools here for six years, and I was preparing during that time to go to college in the East, and when I got ready I went to college.

Q. What college did you attend?

A. I attended the Massachusetts Institute of Technology, in the city of Boston, and I took what they called the summer course in the University of Harvard.

Q. In addition?

— In addition; yes, sir.

Q. Did you graduate?

— In the Institute of Technology; yes, sir.

Q. In what line or branch?

A. I took a course in mining engineering in the Institute of Technology.

Q. What is your profession?

A. I am a mining engineer and surveyor.

Q. What experience, if any, have you had as a surveyor since graduating from that college?

A. I have been actively engaged in making surveys of land grants since 1883, both in Sonora and in this Territory.

152 Q. Did you hold any public positions in Sonora at any time; and, if so, what were they?

A. I have held different positions. My first position there was official mining inspector for the district of Magdalena. Afterward and while I was holding that position I was mayor of the city of Magdalena for two terms. I was afterwards elected prefect of the district for one term of three years. I have been the mining deputation for the same district, and when the mining deputations were abolished I was appointed by the president of the Republic as the mining agent for the district.

Q. What district is that?

A. District of Magdalena. I also have an appointment from the State government as official appraiser of mining and milling machinery, and I have an appointment from the minister of public works as agent of commerce and agriculture. I have other smaller positions.

Q. What surveys, Mr. Bonillas, have you made in the State of Sonora?

A. I have made a great many.

Q. I refer to land grants.

A. Allow me to refer to some of my note books of notes taken at the time and I can mention some of them.

Q. You may do so. We would like to know some of them.

A. (Referring to note books.) Do you mean surveys of public land as well as of grants?

Q. Yes; but particularly mention grants.

A. Here is my note book number four (4) of some surveys of public lands for Don Ygnacio Flores, Jorge du Plat—that is, in 1885—a survey of an old land grant called San Lorenzo. That is immediately south of the town lands of that presidio of Magdalena.

153 That was in 1885. I surveyed the town grant and lands claimed by the inhabitants of Imurez.

Q. Confine it to land grants, please.

A. Yes, sir. I surveyed a part of the land grant of La Cacita. It is also called the Agua Zarca. That was in October, 1885. The

Quitaca land grant I surveyed in November, 1885, and the Alamo de Sevilla about the same time. I surveyed the Los Nogales about the same time. The Panuelas—that was a piece of public land that was there adjacent to these properties.

Q. Can you give us a general idea of the number of land grants you have surveyed in Sonora?

A. Well, perhaps I have surveyed seventy-five or one hundred.

Q. I wish you would tell us, Mr. Bonillas, in surveying these grants, the method pursued by you in surveying them—from what you took your notes from which you would make your surveys.

A. When I first commenced to make land-grant surveys I did like almost all engineers did, I wanted to follow exactly the calls of the title papers by trying to find the monuments by courses and distances given in the field surveys. I found that that would not work at all and I was losing time, and I lost a great deal of time that way, so I afterwards tried (interrupted)—

Q. First, do you read and speak the Spanish language?

A. It is my own language, my native tongue. I afterwards found the best way to make these surveys, not to lose time, but to save work, was to get people who were well informed and well acquainted with the topographical features of the country where the land grants were located, and, as in the documents of the titles of these

grants there are generally places named that are well known,
154 I would try to inform myself from people who were perfectly familiar with the localities to ascertain where these places were and so ascertain where the monuments and boundaries called for were.

Q. Now, how did the courses and distances in the expedientes as stated correspond with the actual courses and distances as you found them in this actual work of surveying these seventy-five or one hundred land grants?

Objected to as incompetent and irrelevant to any issue in this case.

Admitted subject to objection.

A. Perhaps in a thousand or more cases where I have had to investigate the courses and distances of lines I may have found five or ten that agreed with the calls of the title papers in courses or distances.

Q. And all the balance did not agree, do you mean?

A. Yes, sir.

Q. Well, now, in these grants that you surveyed in Mexico, have any of them been approved or confirmed by the government?

Objected to as incompetent and immaterial.

Admitted subject to objection.

A. To my knowledge every one of my surveys has been approved and titles issued for demasias whenever that was the object of the survey.

Q. How did the quantity of the land that was called for in the

title papers agree with the actual quantity as shown by these surveys which were approved?

A. They varied very much. In all my experience in surveying land grants I know but one or two cases where there was a smaller area than the titles called for. The general cases—a great
155 majority, I might say—there were great excesses of land inside of the monuments over the areas called for in the title papers. I will give you some instances from my books if you desire.

Q. Give a few instances of large grants, of which your surveys have been approved, stating the variation in the courses and distances in a general way and briefly, and the difference in quantity.

A. I mentioned the Quitaca land grant. The Quitaca land grant (interrupted)—

Q. Are those notes to which you are about to refer original notes?

A. Yes, sir; all the calculations made in the field or my office—everything here. The Quitaca land grant calls for—I had my calculation made in the metric system in hectares, and I thought I would change the area to acres and the distances to feet, and I have used for a hectare 2.4 acres, so as to give in round numbers the areas, and for distance I have taken 3.3 feet for every metre. The Quitaca land title calls for about thirteen thousand acres, and I found about thirty-four thousand acres inside of the monuments. The monuments are very well known—very well established—and I found that there was an excess of about twenty-one thousand six hundred and seventy in the Quitaca land grant—acres.

Q. Was that survey approved?

A. That survey has been approved. The government acknowledged the title and issued a new title for the excessive land that was inside of the monuments—that is, as to the area. Now, as to the courses, the center of the Quitaca land grant is established at the old ruins of Quitaca—very well known, indeed—in the valley of Quitaca. They said they run to the north 124 cordeles, and described the north centre monument. I found
156 by triangulation that I made of the grant that the course is north 14 deg. 23 min. west instead of north, and instead of being 17,037 feet, the distance called for, I found it to be 31,730 feet. To the south they say the run along the valley, along the road, they called that south. I found that course to be from the centre to the south centre monument south 37 deg. 57 min. east, that much out of bearing called for. They called for one hundred and fifty cordeles, or 20,625 feet, but I found there 26,268 feet—not a great difference. The east centre monument established in a very well-known place, and it is a very well-known monument itself. It is said to be fifteen cordel-s to the east, and the title is so clear that it tells you just how to go to the monument. You follow a ridge from the centre monument and go to the end of that ridge and there is the east centre monument. I followed those directions, and instead of 2,074 feet, which the title calls for, I

found the monument at the distance of 22,077 feet. The course is said to be east, and I found it north 46 deg. 39 min. east.

Q. Was that survey approved?

A. Yes, sir; that survey is approved, and, as I said before, from the total area the government deducted the amount called for in the titles and issued new titles for the excess.

By Mr. REYNOLDS:

Q. Is that excess called demasias?

A. It is called demasias; yes, sir. I can give another instance if you so desire.

By Mr. HENEY (resuming):

Q. The Alamo de Sevilla?

A. The Alamo de Sevilla is a grant that I surveyed immediately after the Quitaca, in 1885. The Alamo de Sevilla calls for four sitios de gañada major. In finding the monuments first of all I
157 found the centre monument, which was very well known, it being on the highway, and then I got the north and south centre monuments. The north centre monument is said to be two leagues to the north from the centre, or 27,480 feet. I found it to be 65,034 feet from the centre monument. The south centre monument is said to be also 27,480 feet, and that I only found to be 23,713 feet.

Q. What is the area called for in that grant?

A. Four sitios.

Q. In acres what would that be about?

A. That would be in acres about 17,354 acres.

Q. And how much did you find in that grant?

A. I found in that grant, just taking the north and south centre monuments—the owners of the grant said that they couldn't pay for all of the excess there was inside of the monuments, so they would not take any land on the sides, and they just asked for the land the title called for, and yet I found that within those monuments there was $23\frac{1}{2}$ square leagues.

Q. And in acres in round numbers?

A. 102,355 square acres, or an excess of about eighty-five thousand acres.

Q. Now, just one more—the grant Cienega de Heredia?

A. The title calls for 17,207 acres. I found within the monuments 99,322 acres, or an excess of 82,315 acres.

Q. Was that grant approved as surveyed by you?

A. Yes, sir.

Q. What is your explanation of the variation in the courses which you found in those surveys?

A. The explanation is they never used the proper instruments for making any surveys, and in fact they never took great pains in making the surveys. The land wasn't worth much, and anybody could get any land they wanted, and in making the survey the people who made the surveys were people who were not
158 competent at all to make surveys as a general thing, and

they would take the topographical features of the country and write a description of what they did or intended to do. For instance, if a valley run northeast and southwest, they would establish a centre point for a starting point, and to the north or northwest they would call that north, and the opposite direction, following the valley, they would call south, and towards the right hand, at about right angles to the course of the valley, they would call east, and in an opposite direction west, and, as in the case of Quitaca, to the east the land was very good, and they would take enough of it, and in this case they went to the foot of the Cananea mountains to establish the east centre monument, and yet they say only fifteen cords. On the other side it is not so good—it is not good at all—and they go to the pueta of the Quitaca, which is a point very well known on the trail, and right on top of the pueta they established a monument only about five or six hundred feet, and yet they say fifteen cords also. In one case they took all the good ground on that side, and on the other side, where it wasn't good, they took just what they wanted.

Q. Did you ever survey the Calabasas and Tumacacori land grant?

A. I did.

Q. From what did you survey it?

A. Do you mean, sir, where I took my notes for the survey?

Q. Yes, sir.

A. I took my notes from the testimonio or title papers of the grant. I think I so stated in my report. (Referring to document :) Yes, I took it from a certified copy of the testimonio, the certification being made by the United States surveyor general for Arizona.

Q. I wish you would state in detail to the court, Mr. Bonillas, your method of making that survey and where the points are. First, did you make a map of it?

A. Yes, sir; I did.

Q. (Producing map.) Is that the map?

A. That is my map, sir.

Q. That is the map that is filed in the case together with the amendment to plaintiffs' petition, I will state, to identify it.

A. In making this survey I had a certified copy of the testimonio or title papers of the grant. The starting point for the Ejidos—fundo legal, as the lands are called in the testimonio—is given as a cross standing in the graveyard of the mission of Tumacacori. I had no difficulty in finding the mission, and much less would I have now, and so I went right there, and I tried to find the north centre monument from the description of the document that I had with me.

Q. What distinctive feature is there at the mission of Tumacacori by which it is known?

A. At the mission?

Q. Yes, sir.

A. There is an old church—the ruins of the church—there, and the graveyard itself, which is very well preserved, and very well

preserved walls are there, with cement, and it is today a very fine enclosure—good wall.

Q. Where is that from the church?

A. The graveyard is in the rear of the church, towards the north.

Q. About how large is the graveyard, if you know?

A. I didn't take the dimensions of it at all.

Q. Well, about how large is it?

A. I should say about one hundred and fifty feet—perhaps two hundred feet—long by seventy-five or one hundred feet wide, perhaps, from my recollection. I haven't taken any measurements at all.

160 Q. (Exhibiting photographs C & D.) These are photographs of the church?

A. Yes, sir; these are photographs of the church.

Q. (Exhibiting another photograph.) These are the walls?

A. Those are walls of the cemetery or graveyard. I tried to find the north centre monument, but I couldn't find it. The north centre monument is said to have been established about half way between this old mission and the presidio of Tubac, about half a league they say, and it is stated in some part of the document that it is about a league distant from Tubac to Tumacacori, and it is about half way.

Q. What did you take for the centre?

A. I took an enclosure—a round one—that is in this graveyard. I have seen other graveyards similar to that one, and I have seen what they call a little chapel where they used to pray and those were surmounted by a cross, and I think that cross was on top of this circular or round enclosure. I took that as the starting point.

Q. (Exhibiting another photograph.) Is that the circular enclosure you speak of?

A. It is.

By Mr. HENRY: I now offer these photographs in evidence and ask that they be identified.

Photograph identified as photograph of the walls of the graveyard is marked Exhibit "Q," and the photograph of the circular enclosure is marked Exhibit "R."

Q. Proceed.

A. I did not find the north centre monument. It is described as being established on the descent to the valley fifty cordeles north from the centre point in front of the devisadero, and the way I understand it or understood it when I got on the ground first is that the point where the monument was established was between this devisadero and some large cottonwood trees which grew outside of the river channel. Although the literal reading of
161 the document would lead one to believe that the devisadero stood between the point where the line terminated and these cottonwood trees, that is a topographical impossibility when one gets on the ground, and then one cannot fail to understand what they mean in the document. I got to this point in front of this devisadero, and to the west on the edge of the valley I found a very large and old

monument of loose stones, and on top of the devisadero I found a similar monument. The title papers or documents I had in my power at the time said that they did not go further north or down the river with the survey on account of meeting the boundary lines of the lands of the presidio of Tubac. Those two large monuments that I found there I have reason to believe and I believe were monuments of the town lands of Tubac and were adopted as the monuments of this pueblo or mission grant, as their object, as they say, was to take the agricultural lands and little of the unproductive lands on both sides of the valley.

Q. Describe, in a general way, how that valley lies as to the width and length and as to what this devisadero is and what can be seen from the top of it.

A. The valley north of the mission extends in a general direction north and south. From the mission it runs slightly towards the southeast. This devisadero is a hill that rises above the rest of the low rolling hills which are characteristic of the banks there about this part of the valley, and the name that it has is very appropriate because when you get to the top of it you look the country all around,

and this is what we mean in Spanish by devisadero, a point
162 from which you can devisar or look out or watch all around.

Q. Can you see Tubac from that point?

A. Yes, sir; you can see plainly the houses and everything there.

Q. Can you see the Tumacacori mission from that point?

A. Yes, sir; you can.

Q. How is it located as between the two places; what distance, about?

A. I think it is just about half way: it may be a trifle further to Tubac from that line than to the mission, but, speaking in general terms, I would say it is just about half way, as the description gives it.

By Mr. REYNOLDS:

Q. I have not a copy of your map before me and, for my information, I will ask you if the devisadero is the point you establish as the northeast corner monument.

A. It is.

By Mr. HENEY (resuming):

Q. Where did you go from there?

A. I made up my mind then that I would take those two monuments that I found on both sides of the valley—the line connecting them—as the north boundary line of the lands of Tumacacori mission. I then went from the mission towards the east. The title papers say that they measured from the river channel to the foot of a hill in a mesquite grove or growth of mesquite trees, and that there they established the east centre monument. I looked from the mission or from a small elevation to the west of it over the top of it at right angles to the course of the valley, and there is a mesquite grove there and there are some hillocks or lomas, and I went to this mesquite grove; it is at the mouth of a little gulch, and there I found

an old monument of loose stones nearly covered up by the erosion
by the waters coming from this little gulch. That answers
163 the description of the title papers and I believe is the east
centre monument of the grant. The west centre monument
is said to be, I believe, eleven cords in a westerly direction (inter-
rupted)——

Q. One moment. Examine this photograph (exhibiting another
photograph) and state whether you recognize that or not.

A. That looks very much like the grove and monument that I
found there as the east centre monument of the grant.

Q. What appearance does the monument have?

A. As I said before, it was nearly covered by the debris washed
down by this little gulch.

The photograph above referred to was offered in evidence and
marked Exhibit "S."

Q. Proceed.

A. It had the appearance of an old monument. The west centre
monument is described as being about eleven cordeles in a westerly
direction from the graveyard, upon a "loma muy tendida," and that
I understand to be "a long, sloping hillock," and on top of just such
a hill I found a very large monument.

Q. Do you recognize (exhibiting photograph)?

A. Yes, sir; that picture was taken after I had set up the flag for
a trigonometrical station. I know the photograph and I know the
monument itself.

Said photograph was thereupon offered in evidence and marked
Exhibit "T."

By the WITNESS: The place where the monument is established
is said to be "mesquite seco," which means dry mesquite tree. Of
course I do not know what reason there was for calling it so, but it
is very noticeable that the mesquite that grow about there have a
dry appearance, and there are several dry ones.

164 Q. (Exhibiting three photographs.) Examine these and
see whether you recognize them.

A. They have the exact appearance of those mesquite trees there;
yes, sir.

Said photographs were thereupon offered in evidence and marked
Exhibits, respectively, "U," "V," "W."

Q. Proceed.

A. Next I went to look for the south centre monument. The
title papers said that from the centre 332 cordeles were measured
toward the south. I think they say along the valley, but I am not
certain of that, the measurement terminating on the upper side,
adjoining the gulch near the place called Calabasas. I went to the
place called Calabasas, as it is quite a well-known place, and to the
south of it there is a gulch adjoining right close to Calabasas, to the
ruins of Calabasas, and on the upper side or the southern side I
looked for the monument. I was disappointed when I did not find

it there, because I thought that was just exactly the place where it ought to be, but on reading the papers that I had I found that there is no mention of a monument having been established there. I suppose the description of the topographical features of this place was so precise that they did not deem it necessary, perhaps, to establish a monument. They do not mention it, and there is no monument there, but I could not fail to accept that place as the place called for.

Q. How far is that place from the old house of Calabasas to the monument?

A. If you will allow me, I will refer to my field-notes, to my triangulation, and perhaps I can tell you exactly.

Q. If you know nearly accurately, I do not care for you to be exact now.

A. Well, I never guess much at distances. I should think it would be about three or four or five hundred yards—
165 perhaps three hundred yards—three or four hundred yards. I could look at my calculations and tell you exactly.

Q. Very well; do that later, but we will not wait now. Proceed.

A. Those are the four monuments spoken about and mentioned in the title papers of this grant—that is, I mean of the agricultural lands; what they call the agricultural lands. I was impressed by the fact that they mention in different parts of these papers that the intention was to take all the agricultural lands in the valley of the Santa Cruz river and those adjoining it, and the few cords, they say, or few cordeles to east and west of the valley, so from that I think that it is clear that they intended to take from the edges of the valley on both sides, so as to take in these low lands or agricultural lands for farming purposes and the wood and so on. So I determined to make my survey so as to take in those lands literally, just exactly as called for in the papers. So I established a series of trigonometrical stations on both sides of the valley and made a complete triangulation of those lands. I have my original field-notes and all my calculations with me.

Q. What circumstances, if any of note, attracted your attention in making this survey?

A. I noticed that while I went around personally with my helpers to put up the flags for trigonometrical stations—I noticed on the edge of the valley, just exactly where I would make the survey in accordance with the calls of these papers—I found monuments on both sides of the valley, and those monuments, with very few exceptions, were old monuments. I do not remember how many, but
166 there were a few—perhaps two or three—that were not very old, but the generality of them were old monuments.

Q. How many of them were there?

A. I could not tell you, but I will count them here. They are marked here on the map—that is, the trigonometrical points I established—and, as I say, with very few exceptions, they were all old monuments.

Q. Well, about how many were there?

A. There are about thirty-three or thirty-four in all.

Q. About what is the distance in miles from the north to the south end of that Calabazas grant?

A. I don't know that I made any calculation of that distance.

Q. Have you the distance marked down there in feet?

A. No, sir; but I can tell you. I can give you the distance from the edge of the western side of the valley (interrupted)——

Q. I mean in a straight line.

A. Not in a straight line. I can give you the distance of the outside lines from the northwest corner to the west center; it is 6,261.23 feet. From there to station C, 19,059.1 feet; from station C to station D, 7,538.58 feet; from D to E, 6,069.81 feet; from station E to station F, 2,456.27 feet; from station F to station G, 3,513.36 feet; G to H, 1,351.35 feet; H to I, 8,034.66 feet; from I to J, 12,540.32 feet; from J to K, 10,325.87 feet. I believe that is the last one on that side.

Q. What is the area called for of the Tumacacori grant in the title papers?

A. The agricultural lands, do you mean?

Q. Yes, sir.

A. I believe four sitios.

Q. Give it in acres.

A. It would be about 17,353.6 acres.

Q. What is the acreage of that grant as surveyed by you, as shown by this map?

A. I found within those monuments that I have mentioned 9,515.8 acres, or 7,837.8 acres less than the title calls for.

Q. Now proceed.

A. After I got through with the surveys of the agricultural lands I proceeded to make a reconnoissance for the survey of the estancia, or lands for stock-raising purposes. The centre of the estancia is said to have been established in "La vega del rio"—that is, the meadow land or low land by the river side, at the place called Guevavi. The place called Guevavi is very well known to me and has been for a number of years. It is not at the old mission of Huebabi, but below the old mission, at the place known very widely, known as Benedict's ranch.

Q. How far is that from the mission, about?

A. About one mile.

Q. What is there to mark that place?

A. The centre?

Q. No; the Guevavi you are speaking of.

A. Why, there are old houses there and there are some new houses there, too. The place is very well known.

Q. How old were the old houses? What appearance have they?

A. They have the appearance of great age.

Q. (Exhibiting photographs.) Do you recognize these?

A. These, I believe, are photographs of the old mission.

Q. Old Huebabi?

A. Yes, sir; they seem to be photographs of the old mission.

Q. Is that the place you are speaking of?

A. No, sir; I am speaking of the place, Guevavi, where the centre monument of the estancia was established. It is about a mile down the river from the ruins of the mission.

Q. What direction is that, about?

A. I should think that is about northwest.

168 Q. (Exhibiting another photograph.) Do you recognize this, Mr. Bonillas?

A. I do; that is the point I took as the centre monument.

Q. Was that monument there?

A. No, sir.

Q. Who built that?

A. I built that monument to establish my point to put a flag.

Said photograph was thereupon offered in evidence and marked Exhibit "X."

Q. Will you describe the appearance of that place there?

A. Yes, sir. The description in the title papers is said to be "La vega del rio," or meadow of the riverside. Almost any place in front of that would answer the calls of the title papers, so I chose this point right in the meadow by the riverside, but close to a very noticeable, prominent clump of cottonwood trees, and I established a monument there.

Q. Proceed.

A. The title papers said that the north centre monument of the estancia was exactly the same point where the south centre monument of the agricultural lands was, and it furthermore states that the agricultural lands and the lands of the estancia, or lands for stock-raising purposes, formed one body. So I took the same point as the north centre monument of the estancia. The south centre monument is said to have been established on the very slope which descends into the low lands or water-course that runs towards the vado seco ahead of the town or ancient mission of Huebabi. The point in the Santa Cruz river called the Vado Seco, or dry ford, is a well-known point, so I went to this vado seco, and it is very remarkable that a very wide water-course—wash—flows right at that

169 point of the river, so I went up that water-course and I looked for the monument on the edges of the valley there, and right close to a place where the old trail used to pass by I was told by some old people that were with me (among them Don Jesus Maria Elias and people who knew that country very well) that in those old times they didn't travel along the valley very much, they always went on the edges, and this was the old trail.

Q. To where?

A. From Tubac and Tucson to Santa Cruz, and on the slope there, descending into this wide water-course which runs to the vado seco exactly in accordance with this description, I found a very old monument of loose stones.

Q. (Exhibiting a photograph.) Do you recognize that?

A. That seems to be a photograph of this place called the Vado Seco.

Said photograph was marked Exhibit "Y" for identification.

Q. (Exhibiting another photograph.) What is this?

A. That is the monument on the slope.

Said photograph was thereupon marked Exhibit "Z" for identification.

Q. Now proceed.

A. The title papers state furthermore that after this monument was established there and the other monuments that they did establish that the parties interested in having this survey made said that the lands of their mission extended further south, and that they could prove that, and that they wanted the rest of the lands that they had owned and that had been paid for by moneys belonging to the mission, and so the declarations of three witnesses were taken and these witnesses testified that these additional lands extended to a place beyond the Yerba Buena, a point well known on the river,

and to the boundary line of the ranch at Buena Vista, then
170 belonging to the Romeros. I went up the river to Yerba

Buesa and from there further up and I was shown this monument, and I found a very old monument there with a stake marked, no doubt, by an American surveyor, and I found it had been marked by Mr. Harris, who I believe to have made a survey, but had adopted that as the south centre monument of the Guebabi and Calabasas.

Q. Do you know whether or not that is the survey of the grant which was ordered by the surveyor general at the time he recommended the confirmation of the grant?

A. Yes, sir; I so understand it. Then I returned again to the centre of the estancia of Guebabi.

Q. One moment (exhibiting another photograph). Do you recognize that?

A. Yes, sir; that is the south centre monument with this stake properly marked by Mr. Harris, I understand. The stake is in the old monument and I did not want to disturb its appearance, so I set my trigo-metric point just on one side of it and put new rocks there and that is where that flag shows in the photograph.

Three photographs of the point referred to in the above answer were marked respectively "A 5," "B 5," and "C 5," for identification.

Q. You say an old monument. Now, how old a monument do you mean?

A. Well, that monument might be one hundred years or might be two hundred years, for all I know. In its appearance it seems to be a very old monument. The rock is weathered and you see it disintegrating, and you see the base of it covered by sand. Some of the rocks—large rocks—pretty well covered and some of the rocks are weathered—have a kind of moss on them.

Q. Did you study geology any?

A. Yes; I had to.

Q. Did you take a course in geology?

A. Yes, sir.

171 Q. From the appearance of this monument where would you say the rocks came from?

A. It is built of granite rocks.

Q. Where did they come from?

A. Right from the ridge where the monument is. It seems to be the general formation of that section of the country there.

Q. Might not that monument have been built there by Mr. Harris originally?

A. It is not possible that it was, because I understood that Mr. Harris had made a survey some time in the seventies—that is, some years previous, but I don't know exactly how long—and if he had built that monument the rocks would show it; the marks on the rocks would show it.

Q. Marks for what?

A. The water-marks. The rocks are in the ground and when they are picked up the water-marks remain on them for years and years. I have seen a monument that I built in 1883 and 1884—monuments—and I have seen them within the last five or six months and they are standing just as I built them, and the water-marks are there, and they are ten or twelve years old.

Q. Now, by the term "old monuments," as used by you in each instance of which you have spoken of monuments being old, what did you mean by that?

A. I meant such monuments as I have described here; old monuments of loose stone that have every appearance of age, covered by sands at the base, and in some instances trees or shrubs growing in them, and the rocks are weathered and you see the position of the rocks has not been disturbed. You pick up a rock and you see the marks—the shade—is different from the other rocks, and the contact, and you notice that it is old.

Q. Now, go on with your testimony.

A. Next I went to look for the east centre monument. It is described in the field-notes of the original survey as being erected
172 & 173 at the foot of that side of the Cerro de San Cayetano which looks towards the south, the survey not being extended any further in an easterly direction on account of the roughness and inaccessibility of the country and for the further reason that the grantees petitioned the person who was making the survey to add on the western or potrero side the rest of the lands to which they were entitled on the east. When I read the description I was very much confused, the place called Guebabi being at a considerable distance up the river from Old Calabasas, which is mentioned in the survey of the agricultural lands. The Cerro de San Cayetano that I have known is a range of mountains which lies east of these agricultural lands, and I would say, yes, almost east of the starting point of these agricultural lands of the Tumacacori mission. So when I read that description I said this must be a mistake, that cannot be the mountain which these people meant to describe, where the east center monument of the estancia was established. Furthermore, I was led to that belief by the fact that in the description they

say that they run so many cordeles (37, I believe) in an easterly direction from Guebabi, and that measurement terminated at a cerro. They do not speak of the San Cayetano mountain there. Then they go on and say that they could not go ahead on account of the roughness of the country, and, furthermore, the surveyor was petitioned to extend the survey to the west or the potrero side as many cordeles as he had failed to go to the east, and then, having established the monument at the foot of the Cerro San Cayetano, they returned to the centre. At first they don't mention the cerro, and I think they mention it incidentally. I do not believe they meant what is known as the Cerro de San Cayetano, because it is an absurdity.

174 Q. What direction is it from Guebabi?

A. Perhaps a little west of north and quite a distance, and they were going east. They went at right angles to the course of that valley.

Q. Where do these title papers say that the north boundary of the Calabasas is?

A. Of the Guebabi, do you mean?

Q. Yes, sir.

A. On the south boundary of the agricultural lands, and that point is already quite a distance south, or a little east of south, of that chain of mountains called San Cayetano.

Q. Now, in your surveys in Mexico and from your general knowledge of the Spanish language, what is the meaning of the word cerro?

A. Cerro is a hill. It is a mountain of not very great size, and it is generally formed of rock lying in place.

Q. What would you call a small hill or hillock?

A. I would call it a loma.

Q. Is that the general designation of a small hill?

A. Yes, sir; or colima.

Q. Did you meet with the word cerro in your surveys in Mexico to any extent?

A. Very often.

Q. And did you find that it was used by surveyors as applying to a mountain or hill?

A. To a hill.

Q. What word is applied to mountain—large mountain such as the San Cayetano mountain?

A. I would not call that a cerro, really, because it is too high for a cerro. I would call that a sierrita, but it is to my knowledge called the Cerro San Cayetano; that is what I have heard it called.

Q. Around here?

A. I am speaking with propriety, and I would not call it a cerro.

Q. Ordinarily, are such mountains called cerros by surveyors?

175 A. I don't think so. I think it would be called more a sierrita.

Q. What do you call the highest point of a range?

A. I call that a pecacho.

Q. Now proceed with your description.

A. There is another description given to the point where the lands of this estancia reached, and that is in the declaration of these witnesses. They say that the monument on that side was at the Sonoita cañon upon a "mesa muy tendida." I translate that, and, from the knowledge I have of the descriptions given in so many title papers, I call that "a very gradually sloping mesa."

Q. What does the word tendida mean?

A. It means spread out; as you find the word isolated; without referring to any object; stretched out.

Q. What would you call a mesa like this one out here above the town of Tucson?

A. Well, some parts of it would be called "mesa plana"—where it is level—and where it is gradually sloping it would be called "mesa tendida" or "mesa inclinada."

Q. Explain where you found the east monument.

A. I was going to say that description I found in some points agrees to a certain extent, and I made up my mind that they did not measure 37 cordels up to that point, but they simply took a description of the place where this monument was located and said, Well, so much is there, and we will let it go for so much; and I went in an easterly direction from the centre, following the wide wash or gulch that flows into the river of the valley just about that point of the river valley, and I followed that to the east. I followed that with the direction of that gulch, and I looked for a monument, and I didn't find anything that I would call a cerro for a long
176 distance from the valley. There is a series of long, bald ridges which I would call "cuchillas" or "lomerio," but not one of the cerro, till I came to the edge or banks of the Sonoita cañon, and there I found some pretty rough country, and there on the edge of the Sonoita cañon I found what I would probably call a cerro, and there close to this cerro and descending very gradually towards the valley of the Santa Cruz there is a mesa, as they describe as a mesa "muy tendida," and on the edge of the mesa and on the side to the south of this hill, there being between the mesa and the hill a slight depression, there I found a very old monument, which, in my estimation, answers the calls of the title papers, and I accept that as the east centre monument.

Q. How wide is the mesa you speak of?

A. Rather narrow, in the sense that it extends towards the Santa Cruz valley.

Q. And where does it end?

A. That mesa properly ends on the side where the monument is.

Q. Traveling from there in the direction of Guebabi, where does it take you to?

A. It ends there where the gulch forms a cañon. Then you have afterwards some lowland, and after that cañon you come right from the mesa and follow the gulch, and you come to the centre point, where they started this survey.

Q. Run straight down there, does it?

A. Yes, sir.

Q. From that point, or there on this cerro that you speak of, what monument of this grant can be seen?

A. I established a trigonometrical point on this cerro for the purposes of triangulation, and I observed, both with my naked eye and with the telescope, in my transit that you could see all
177 the country around you—could see the south centre monument as described, the north boundary of the Buena Vista Ranch de los Romeros, and I could see a great many of my trigonometrical points from there; very many. It is a very high cerro.

Q. Which monuments of the grant do you say you could see?

A. I could see—I saw afterwards when I was taking my data for triangulation after I had set my flags at all the points, I could see the west centre monument of the grant also which I have not described yet. I mean I could see a flag which I put up very close to it.

Q. Could you see the south centre monument?

A. The south centre monument of the estancia; yes, sir; beyond the Yerba Buena, up the river.

Q. Could you see Calabasas?

A. Yes, sir; I think I could. You mean the old ruins? If you will let me refer to the observation there I can tell you all the points I saw.

Q. You may refer to them in a moment. (Exhibiting photographs.) Look at these photographs first and see if you recognize them?

A. That is the photograph of the old monument.

Q. Which you took for east centre monument?

A. Of the estancia; yes, sir.

Said photograph was thereupon marked "E 5" for identification.

Q. And this one?

A. That is the photograph of the cerro which the old fellows call San Cayetano. That is the trigonometrical point I established there.

Said photograph was thereupon marked "D 5" for identification.

By the WITNESS: I think that shows part of the mesa
178 where the monument is. The mesa extends from there in this direction towards the valley.

Q. (Exhibiting photograph.)

A. That is a gradually sloping mesa down towards the Santa Cruz river.

Said photograph was thereupon marked "F 5" for identification.

Q. Now, you might give that data you spoke of, if you have it handy, as to what can be seen from there.

A. I can see from the cerro the south centre monument of the estancia of Guebabi; I could see a flag on what they call Benedict

mountain; that is a high mountain that is west or southwest of Guebabi. I could see the west centre monument, the flag established thereon—the western centre monument of the estancia. I could see Sanford's Station and the Arizona and New Mexico railroad.

Q. Where is Sanford's Station from this cerro that you took to be the cerro?

A. It is about west from the cerro.

Q. And lying down right in front of it a short distance?

A. Yes, sir.

Q. Is that known as the Sonoita cañon where Sanford's Station is?

A. Yes, sir.

Q. What is the general conformation of the country from there going on east?

A. It is very rough.

Q. Very rough hills?

A. Very rough.

Q. What does the titulo say about that?

A. It says they didn't go any further because the country was very rough.

Q. I think that will do as to that. Describe exactly what this cerro looked like in common parlance.

A. I would call it something like a truncated cone. It is rounded upon top and the hill is circular or round.

179 Q. How does it stand as compared with other hills? Is it joined with any?

A. No; it is joined onto this mesa, on the edge of which the monument is, and then it descends abruptly towards the Sonoita cañon and it is cut off from the rest of the hills. It stands alone, just connected with the mesa, the edge of the mesa forming the watershed between the Santa Cruz valley and the Sonoita cañon.

Q. Does it rise to any extent above the mesa on the mesa side?

A. Yes, sir; a considerable extent.

Q. That is all. Now go on with your description.

A. Then to look for the west centre monument. The west centre monument is described in the title papers as being situated on the caida, or "fall" it would be—that would be the literal translation, the descent or fall or slope—of the highest loma. That is the highest hillock that can be seen from the potrero. Now, you cannot see either the potrero or any rolling hills that extend to the west of it from the centre monument of the estancia at Guebabi at this meadow, but by following a westerly direction at right angles to the course of the valley in an opposite direction to the east centre monument there is a gulch that runs up to some highlands lying between the valley of the Santa Cruz and the valley of the potrero, and by following this gulch up you come to the highlands, and there another gulch rises that runs towards the potrero, and there you can see further; you can see this "lomerio" or "these rolling hills" extending to the west, and going down that gulch you come to the potrero, and you follow to the west and you come to this

highest loma described in the title papers. On the top of this loma there was a large monument, and on the "caida" or
180 slope or descent of this loma there is another monument, and this I considered as the west centre monument of the estancia. This loma is quite noticeable; it rises above the rest of the rolling hills and is quite a noticeable topographical feature.

Q. What do the title papers call for as that west centre?

A. I described that before. It calls for a place on the caida descent or fall of the highest loma that can be seen from the potrero.

Q. (Exhibiting three photographs.) Can you recognize these?

A. Yes, sir; this one is the photograph of the monument that stands on top of the loma, with a flag I established there.

Said photograph thereupon marked "G 5" for identification.

By the WITNESS: And this other is the monument that stands on the caida or descent of this loma, which I took as the west centre monument, and this other one is the same monument taken from a different position.

Said last two photographs were marked Exhibits "H 5" for identification.

By the WITNESS (continuing): The title papers—besides these monuments that I have described, in the declarations of these three witnesses it is stated that there is another monument besides these cardinal monuments I have described, and on the potrero side—that is, to the south—the lands reached or extended to a point above the Cienega Grande or above the large marsh. This large marsh of the potrero is very well known now and used to be much better, used to be much larger than it is today, because a great deal of it
has dried up, as I have heard from a great many old people
181 who have traveled through there. Above the Cienega Grande, they say, there stood a monument there on that place, so I looked for it, and I thought I found the identical monument that they referred to, a very large monument to the south of the cienega, on the low hills (lomerio), that stand to the south and, as you might say, beyond or above the Cienega Grande.

Q. (Exhibiting two photographs.) Do you know these?

A. Yes, sir; that is the monument above the Cienega Grande. I think some rocks have been picked up around here that were fallen down and have been put up on top of it; but the base is all there, and you can see that it is a very old monument just from the base of it.

Said photographs were thereupon marked respectively "I 5" for identification.

Q. Proceed.

A. This being all of the monuments mentioned in the survey of the estancia, I resolved to make a survey connecting them, and in my estimation, as there were no corner monuments established as it was the practice and custom at that time when the surveys were made, I would have to establish those corners monuments. Were

1 making the survey in Mexico it was the custom to establish them, and I have met with many instances with titles where simply the mojonares cardinales were established and the corners were not established on account of the roughness of the ground or because they did not care to, but in my resurveying those grants I have established the corner monuments, and those surveys have been confirmed by the government in every instance, and, going on that theory, I made a survey of this estancia showing the location
182 of these cardinal monuments and of this monument above the Cienega Grande, and I thought that running from the north and south centre monuments parallel lines should be run to those running from the centre monument to the east and west centre monument and from the west and east centre monument parallel lines in the direction from the centre to the north centre and from the centre to the south centre, and in the convergence of those lines the corner monuments should be established.

Cross-examination by Mr. REYNOLDS:

Q. You say you went to school at San Ygnacio until you were twelve years old and then came here?

A. Yes, sir.

Q. How old were you when you went to college in the East?

A. I was twenty-two years old, about—twenty-one to twenty-two.

Q. In attending the schools of Tucson you studied English there, didn't you?

A. Yes, sir.

Q. Then the only schooling you ever had in Spanish was during the time you went to school when you were twelve years old?

A. In San Ygnacio and Magdalena only.

Q. That is the only schooling you ever had in Spanish up to twelve?

A. Yes, sir.

Q. Now, you have stated you have surveyed a large number of land grants in Mexico. Were those principally surveyed in Sonora?

A. Yes, sir; in Sonora.

Q. Now, your surveys were made on behalf of the national government, were they not?

A. Sometimes.

Q. Whenever the government afterwards approved the title they were made on behalf of the government?

A. Yes, sir; I was appointed by the district judge—federal judge—having charge of those matters to make these
183 surveys.

Q. You were appointed, then, in these instances for the purpose of surveying land grants to find out how much land was included within the outboundaries of the grant or monuments over and above the amount included and sold by the title papers?

A. Sometimes for that purpose and sometimes for other purposes.

Q. That was one of the purposes in making these surveys?

A. Yes, sir.

Q. The government was trying to find out how much land these parties were claiming over and above the grant?

A. No, sir; they were not trying to find out that.

Q. Were not trying to find out what the demasias were?

A. No, sir; the government was not trying to find out anything. It was the owners that wanted their land surveyed and wanted to acquire the excessive lands they might have inside of the monuments, and they were petitioning the government to grant it to them.

Q. The owners of the lands were claiming the lands lying within the outboundaries against the national government over and above the amount called for in the title papers?

A. Yes, sir.

Q. Known as demasias?

A. Yes, sir.

Q. And you were surveying those. Now, the way you found the demasias you took the title papers and found out how much land had been sold and was included within those title papers?

A. Yes, sir.

Q. And you then went to the monuments and surveyed them to the *the* outer extremities?

A. Yes, sir.

184 Q. And found what that area was?

A. Yes, sir.

Q. And took the difference in the amount of land called for by the title papers and the total amount of land you surveyed, and the difference was the demasias which belonged to the government?

A. Yes, sir.

Q. And which the party was denouncing and buying from the government?

A. Yes, sir.

Q. And those were the titles that were afterwards approved and issued on your surveys?

A. Yes, sir.

Q. Approving at the same time the "cabida legal," the original amount sold?

A. Yes, sir.

Q. You found in a great many instances, didn't you, that the outboundaries of the grant contained more lands than was contained in the title papers, didn't you?

A. I have stated so.

Q. Now, in surveying these two grants—in surveying the estancia grant—if you were surveying that in Mexico for the purpose of ascertaining what the demasias were you would have surveyed the four leagues and then surveyed the outboundaries as you have surveyed them and would find out the area contained in the outboundaries and deduct from it the four leagues and the balance would be the demasias, would it not?

A. Not exactly, sir. In these papers that I have with me the fact is mentioned that the depopulated town of Calabasas is included in this survey. That old town of Calabasas must have contained at least four square leagues for the "ejidos" and two leagues or more, perhaps, for the estancia. That depends upon the amount of land that the people living at the time in Calabasas needed at that time for raising their stock and cattle. So it would have been very hard to say what the "cabida legal" of this estancia
185 was and the ejidos of Tumacacori would have been. Next, the land of Calabasas and estancia were included, and the grant was made with the condition that if, at any future time, the depopulated should be settled again that these lands would be returned to them.

Q. Did you survey the fundo legal of Calabasas?

A. I did not, sir.

Q. Why?

A. There is no data given in the title papers—no description given in the title papers as to how the survey should be made.

Q. Then I ask you again the question, if you were surveying the estancia grant, four square leagues or sitios, and also surveying according to the natural objects for the purpose of determining the demasias, you would survey the four leagues of outboundaries and deduct the four leagues from it, and the balance would be the demasias, would it not?

Objected to as supposititious and not based on any facts in this case.

By the COURT: Proceed.

A. Yes, sir.

Q. Take the Tumacacori survey. You took the ruins of the old graveyard as the centre monument of that survey and run your line north, didn't you?

A. No, sir.

Q. Why?

A. Because, I said before, that I never followed courses or distances given in these title papers. I go to the topographical points described. I lost a great deal of time when I did that, when I was first getting experience in surveying.

Q. Now, taking the translation as we have it in the title
186 papers, to which I believe no objection will be made, "I proceeded to the place pointed out in the cemetery, in front of the cross, to the point decided upon as the centre, and, having myself set up a well-adjusted compass, which I also brought for the purpose, I took a direction towards the north down the valley and proceeded to carefully measure and count fifty cords, which terminated in front of the lookout hill which lies between the descent of the valley and two very large cottonwood trees which stand outside of the channel of the river, at which point I ordered placed an- there were placed a pile of stones to mark the place for a monument." Did you undertake to run that line?

A. I didn't think it was necessary to do that. I looked for the

monument where it was described as being, and, not having found it, I thought I would not lose time by running that line.

Q. Further: "I did not proceed further in this direction, as I had reached the lands of the presidio of Tubac; returning to the centre now again." I will change that and read it exactly as it is: "Having returned to the centre, a direction towards the south was taken, in which direction I proceeded, measuring and counting with equal care 332 cords, which ended on the upper side adjoining the cañon near the place called Calabasas." Did you do that?

A. I did not measure at all. I knew where the place called Calabasas was and I went to look for the point described there.

Q. I asked you if you did what is described there.

A. No, sir; I did not.

Q. You did not, then, establish a north centre monument nor a south centre monument?

A. I went to the place described; yes, sir; and I established a south centre monument. I put up a monument there. There was no monument there and the title paper does not say there was one established there.

Q. I notice by your map that you have run the side lines of this Tumacacori grant—that is, the east and west side—zigzag lines?

A. Yes, sir; it is a broken line.

Q. How do you know it is a broken line?

A. Because it does not follow the same direction; it goes in different directions.

Q. How do you make it a broken line from this survey set out in this title paper?

A. The object of the survey was to take the lands in the valley, they so stated, and a few cordeles on both sides of the valley. Now, if you undertake to follow your field-notes and run south from the burying ground you will run on the mesas to the west and leave agricultural lands to the east, and that was not the intention of that survey.

Q. You are putting a construction on the title papers and not running a survey according to the calls?

A. I understand that I am running it exactly in accordance with the calls—yes, sir—taking the agricultural lands inside of the survey and not taking mesa lands and leaving the agricultural lands outside. That is not common sense.

Q. If you were to run a straight line from the ruins of Tumacacori to the point where you established the monument on the cañon near Old Calabasas, and then take the distances called for east and west, as measured from the bed of the river and as measured from the ruins, and then with that constructive parallelism would not you take in the river?

A. You would take it in in parts.

Q. Would not you take it in wholly?

188 A. I don't know that you would. I think you would leave some of it out.

Q. Where would you leave it out?

A. In some points along the valley there.

Q. I will ask you to explain to me from the title papers or anything else how you get that little toe running up the Soñoita river there that is shown on your map here.

A. I will with the greatest pleasure, sir. The title papers say that all the agricultural lands in the valley were included within the survey, and the agricultural lands adjoining the valley.

Q. Why didn't you go on further up?

A. Because I went as far as there are any agricultural lands in the Soñoita valley, and that is the reason the survey is in that form.

Q. The point you run up there takes in the Soñoita grant?

A. I don't know anything about the limits of the Soñoita grant. I wasn't surveying it, and did not ascertain where the boundaries are.

Q. Don't you know as a matter of fact that the Soñoita grant comes down that river, and takes it in very much as you have undertaken to take in this Santa Cruz river by your survey?

A. I don't know anything about it at all, and never read the title papers of the Soñoita grant, and I don't know what its calls are.

Q. You say it says it will take in all of the valley lands; I wish you would show me in the description where it says anything about taking in any valley lands.

A. Yes, sir.

Q. In the survey, I mean.

A. (Examining documents.)

Q. Never mind it, sir; I find it in the translations.

A. All right, sir.

189 Q. Take the first proceeding in the original, please.

A. I have it.

Q. You have construed that part of this instrument in the first proceeding of survey and concluding with the reference to the course to the west, wherein it says, "there being no other tillable land in the whole valley or in its neighborhood, several cords of those mentioned being barren lands toward the east and west."

A. Yes, sir.

Q. You have construed that to be all of the valley land up the Sonoita as far as they went?

A. I construe all the agricultural land lying in the valley of the Santa Cruz, and, as that paper says, "the tillable land adjoining them."

Q. Where do you find "tillable land adjoining"?

A. Agricultural land, I think, or something of that sort is there. I will find it for you and will read exactly what is there. "Fundo legal and tillable lands were measured for said mission without there being other land for farming purposes in all the valley nor in its vicinity."

Q. You have reference to the valley of the Santa Cruz and not the valley of the Soñoita?

A. The valley of the Santa Cruz and its vicinity, sir.

Q. And you took in also the valley of the Sonoita just as far up as you could find any tillable land?

A. Yes, sir; I consider those are the lands referred to in the vicinity of the valley of the Santa Cruz.

Q. And if there had been another river on the west like that, coming into it as that does, you would go up that as far as
190 *coming into it as that does, you would go up that as far as you could to the tillable lands?*

A. Certainly.

Q. Whether it took you one mile or twenty miles?

A. Well, I don't know what I would have done in that case.

Q. Well, there is no limit to it?

A. There is no limit to it here; no.

Q. Then you would have taken all you could find?

A. Yes, sir; I think it was the intention in the original survey.

Q. You established the northeast and northwest corners of the Tumacacori grant. Did you run north to the termination of what is the measurement of what is the north line which terminated in front of a lookout hill which lies between the descent of the valley and two very large cottonwood trees which stand outside of the valley of the river and at which a number of stones were placed to mark the place for a monument? Did you look for that hill?

A. The devisadero.

Q. I don't know. I am talking English now. The hill or whatever it is.

A. Well, yes; that hill is on the edge of the valley. You would not look or anybody else would not look for the hill in the centre of the valley there. It is a misconstruction of the language. It is the point where the measurement terminated—that is, in front of the devisadero and between those cottonwoods and the said devisadero. There are cottonwood trees there just outside of the channel of the river. You would not go and look for a devisadero right in the valley there, and I didn't look for it.

191 Q. Is not this a correct translation of what is in that document?

A. Yes, sir; I admit that.

Q. This translation says that the measurement terminated in front of the lookout hill, which lies between the descent to the valley and two very large cottonwood trees.

A. That relative pronoun seems to refer to the devisadero or hill, but I think the intention is that it refers to the point where the measurement terminated.

Q. Then you put your own construction on this and did not undertake to follow it literally?

A. I went on the ground and I saw that it could not be possible for them to be describing a hill rising right in the center of the valley between this point and those cottonwood trees.

Q. Do you think the surveyors were on the ground when they made that survey?

A. I think they were; yes, sir.

Q. You found what you claim to be monuments of this grant all over it, didn't you?

A. Yes, sir.

Q. You think those monuments were made when the original survey was made?

A. I see no reason why they should not.

Q. Do you know when the survey was made?

A. I believe the survey was made in 1807. This north centre monument I would not expect to find in the valley—right in the valley. I think the floods and so on would destroy it and take it away.

Q. Now, by the ordinary system of surveying, without regarding or putting any construction upon the meaning or undisclosed
192 intent of the surveyor, when you located the northwest corner and the northeast corner and the east centre monument and the west centre monument and the south centre monument and there was nothing more in the survey, would not the ordinary rules of survey require you to connect them by straight lines?

A. No, sir; not when the expressed intention was to take the valley lands.

Q. Would not that take the valley lands?

A. I don't think it would.

Q. Wouldn't it take nearly all of them?

A. Some of them, but not nearly all of them. I think if you would go on the ground and try to carry that idea out you would leave most of your lands outside of your lines.

Q. Now, you state that in running these side lines you found a great many monuments.

A. Yes, sir; I did.

Q. Do you think those Mexican surveyors put those monuments there?

A. No, sir; I do not.

Q. Then why do you use the term monuments here? You have undertaken to use the term as land monuments for land surveys?

A. Yes, sir.

Q. And do you think those were monuments of land surveys?

A. They were not established, I do not think, and I know they were not established by the original survey, but my theory is that these natives did monument their land along the edges of
193 the valley there to know what they had. That is my idea about it.

Q. Did you find any monuments besides those you used for your stations?

A. Any other monuments?

Q. Yes, sir; any other monuments like the ones you used along there?

A. Well, now, I did not reconnoitre into the country away out.

Q. No; I mean practically along the same line, which might have been used as well as those you did use.

A. I think I took all the monuments that could be used to enclose the valley lands.

Q. You could have run up on the mesa and found more, couldn't you?

A. I did not go and am not prepared to say.

Q. You didn't go on the mesa at all?

A. No; I was making this survey and I was going to the points that I needed to go to.

Q. Did you find any monuments on the west line where your station monuments were?

A. I think perhaps the—with the exception of two cases. Yes; I am pretty sure that with the exception of two cases where I established trigonometrical points there were old monuments standing.

Q. Do you think those monuments were established by the surveyors in 1807?

A. I have said that I do not think so.

Q. Now, what was the area you made in that survey of the Tumacacori mission grant?

A. 9,515.8 acres.

Q. What was that, a two-league or a four-league grant?

A. Four leagues for the ejidos for the "Fundo legal;" 194 four sitios, I think.

Q. Now, what does the grant say in reference to that?

A. In reference to what, sir?

Q. As to what the Tumacacori grant contains. It is called the "Fundo legal," and it describes what is contained in it. I will read the application (reading): "We therefore appeal to the notorious justification of your excellency, humbly requesting that you be pleased to issue the proper orders and ample commission to proceed at once and in conformity with the general and precise provisions of said superior sovereign orders to said division and allotment of the lands that should be granted and adjudicated to us for both purposes, with the understanding that the four leagues (one to each wind), which are to be measured for us as town lands, be measured and given to us precisely in the proportionate and equitable extent and limitation and in such directions as are best suited to us, at our discretion and option." You mean four square leagues or one square league by that?

A. That means four square leagues; and it was customary.

Q. Now, are those linear leagues or square leagues; four leagues, one to each wind?

A. I think they meant the four square leagues.

Q. How can square leagues mean one to each wind?

A. All those terms were put in. I have met with a great many of those terms in these petitions. These petitions were not written by the Indians, but by some wichatero in the town where they went to make the petition.

Q. That is your opinion?

A. I know that to be a fact.

Q. That is your construction of it. I want to know when they said "four leagues, one to each wind," whether they meant square leagues or lineal leagues.

195 A. They are called the "Ejidos," the "Fundo legal." I know what the "Fundo legal" is; it is a square for the habitations and houses of the people of these towns, and it was a square

1,200 varas per side. I know they meant the "Ejidos." Do you suppose the four square leagues were the "Fundo"?

Q. I don't suppose anything. You have been doing most of the supposing yourself this evening.

A. I had some foundation for it.

Q. Now, after surveying the Tumacacori grant you surveyed the estancia, didn't you?

A. Yes, sir.

Q. And you established a centre monument at Guevavi?

A. Yes, sir.

Q. At the "Vega del Rio"?

A. Yes, sir; where it is called for.

Q. Did you find any ruins there?

A. Yes, sir.

Q. Did you find any monument there?

A. There is, I believe, one or two monuments there—piles of stones—but they don't look old enough—they didn't look old enough for me, and I didn't think they were the monuments, and the vega del rio is very well defined.

Q. Is there not a vega by the river at the old place called Guevavi?

A. Down the river from the mission, about a mile; yes, sir; at Old Guevavi.

Q. Is there any vega up the river anywhere near the ruins?

A. Oh, well, there are little small places of land there, but the vega del rio—the meadow land, the best land—is right at the place called Guevavi.

Q. Might there not in 1807 up at the old ruins have been plenty of vegas that would answer this description?

A. No, sir.

Q. Why?

A. Because the river is very narrow there at the ruins; it is more like (interrupted)—

Q. Now, you have been supposing, Mr. Bonillas; now, 196 would it not have been more likely that this monument in 1807 would have been established with the mission as the centre of the grant?

A. Well, the title papers do away with that question entirely, because they say in measuring from the point called Guevavi they went towards the south, and the line terminated beyond the ruins of the ancient mission.

Q. At the vado seco?

A. Yes, sir.

Q. You did not when you run that line from the centre monument, instead of taking the survey and stopping at the vado seco as the surveyors did then, you took the testimony given by the parties before that and substituted it and went on clear down to the vado del Apache, didn't you?

A. No, sir; not to the vado del Apache. I went to the monument beyond the Yerba Buena—above the Yerba Buena.

Q. You substituted for the survey made by the parties in 1807—

you substituted for that survey, I say, the testimony of witnesses that had been taken prior to the survey, didn't you?

A. I took the data furnished by the title papers. The title was issued not only for the land included within this survey, but also for the additional lands petitioned for. They were also granted.

Q. They were not surveyed, were they?

A. No, sir; but they described the points where these lands reached, and I took those points.

Q. Well, these lands were not included in this survey nor intended from these title papers, because the testimony about the additional lands was taken before the survey?

A. It was taken after the survey was made, sir.

Q. Ah; I thought I'd catch you. That survey was made in 1807, wasn't it?

A. To the best of my recollection.

Q. (Exhibiting document.) Now, look at that and see if
197 that is the testimony that was taken in 1806 and taken before the presentation of the petition for this grant?

A. (Examining paper.) The date of this paper is 1806, the date of the petition.

Q. I mean the date of the testimony. Is not the date of the testimony of these witnesses prior to the survey and making of this grant?

A. Yes, sir; it so appears from this paper here.

Q. So you took, in making your survey and in fixing that south centre monument—you took the testimony of those witnesses that had been taken before the survey was made, in 1807, and substituted it for that survey, did you?

A. I did not take it because this testimony had been taken before or after the survey, but I took it because in the granting clause of this title the title is granted to the lands included in the survey and the additional lands petitioned for, whether the testimony was taken before or not, and that is the reason I took it.

Q. You did not fix or attempt to fix the south centre monument at the vado seco, as called for in the survey, at all, did you? You neglected and ignored it.

A. No, sir; I did locate the monument established in the vado seco so as to show it, and my map shows it.

Q. Does the survey made by the officers who were making this survey in 1807—does the survey go any further south than the vado seco?

A. The survey that was actually made goes to the monument that I call the vado seco monument in my map.

Q. And no further?

A. And no further.

Q. That is all the survey?

A. Yes, sir.

Q. Then you are now the first man that has surveyed it down there with these title papers?

A. I don't know whether the first man or the last man.

198 Q. You did not undertake to make the survey that was made by the Mexican officers? You undertook to take this grant, construe it yourself, and survey it independently of the survey officially made by the Mexican authorities?

Objected to. Objection overruled. Exception by petitioner.

A. I made the survey in accordance to the understanding I have of the land that was granted. The title papers say in the granting clause that the lands included in the survey as made by that officer are granted and the lands included within points of these declarations, these additional lands, and I believe it speaks of the depopulated town of Calabasas and the Potrero of Guevavi, or something of that sort; and I understand that the lands that were intended to be granted were to the points described in the survey and to the points as declared where the monuments were located by those witnesses.

Recess until 10 o'clock tomorrow (Wednesday) morning.

199 WEDNESDAY, *March 27th*, 1895—10 o'clock a. m.

Continuation of trial pursuant to adjournment.

YGNACIO BONILLAS—Cross-examination continued.

By Mr. REYNOLDS:

Q. Mr. Bonillas, you stated yesterday that the description contained in the petition for this grant in 1806, that the term four leagues, one to each wind, which are to be measured as town lands, means four square leagues.

A. Yes, sir.

Q. Can you measure and plat, independent of quantity, the call four leagues, one to each wind?

A. I do not understand your question.

Q. Can you lay down four leagues, one to each wind?

A. Yes; you can. Start from a point and measure along four winds or cardinal courses a league on each course.

Q. Well, if you were going to measure one league to each wind, or four leagues, for a town site, would you make it four square leagues?

A. I would.

Q. And to measure that it will have a league a side, or four leagues all around?

A. Do you mean so as to give an area of four square leagues?

Q. No; an area of one square league with one league on each side.

A. One league on each side?

Q. Making four leagues all around?

A. The perimeter of the square to measure four leagues?

Q. Yes, sir; one to each wind.

A. You would not have one to each wind there.

Q. Why?

200 A. Because if you started from a centre you would only have a half.

Q. But suppose I didn't start from a centre?

A. I understand you, but supposing you were starting from a center and that you were referring to the survey we are dealing with?

Q. I am referring now to the survey of four leagues, one to each wind.

A. You have to start from somewhere, and if you start from any one point and run a league to each wind you are not going to have a square of one league, you are not going to have four leagues in the perimeter of that square, because you would not go to the four winds.

Q. Why?

A. You would only go to three winds.

Q. If I start at a point and run a league west, and I run from that termination a league south, then from that point I run a league east, and from there I run a league north, hav'n't I run to the four winds?

A. Yes; you have.

Q. Well, is the word league standing alone linear or superficial measure?

A. It is linear measure.

Q. And you would take it as linear measure unless qualified by some word meaning a superficial measure, would you not?

A. Yes, sir.

Q. Now, Mr. Bonillas, in going over these title papers, in running the east line from the centre monument in the estancia grant, you knew before you went there what the Cerro San Cayetano was, didn't you?

A. Yes, sir.

Q. You knew what had always been called in this country as the Cerro San Cayetano?

A. Yes, sir.

Q. You knew perfectly well when you started to run that east centre line that you were not going to find the Cerro San Cayetano in that direction, didn't you?

A. Yes, sir.

201 Q. And you were determined to run that line east until you found something that would in your opinion answer for a cerro?

A. I was determined to find the monument or point that would answer the description in the title papers of the point, the topographical description of the place where that monument was said to be.

Q. And you were going to keep on running until you found what answered in your opinion the term cerro?

A. I was going to keep looking for the place where the monument was said to be that would answer the description where that monument was said to be located.

Q. And you found what you call a cerro, which is designated on

the face of the photograph as "16" and marked on the back "E 5," and that is what you call a cerro?

A. Yes, sir; that cerro that is over there is appropriately named, is appropriately called a cerro in my estimation.

Q. Is the term cerro applied to objects or hills or mountains of any particular size?

A. I think that a cerro is a high elevation of land; not too high nor too low, as in that case I would call it a "montaña."

Q. Does that mean "mountain"?

A. Yes, sir.

Q. Do you know where the volcano near the city of Mexico is called Cerro Popocatepetl?

A. I never heard it called that.

Q. You never heard it called that?

A. No, sir.

Q. Do you know whether it is and whether that is the general designation of it?

A. No, sir; it is called the volcano to my knowledge.

Q. Do you know what its height is?

A. Yes, sir; I believe it is 15,000 feet.

Q. Isn't it over 17,000?

A. 15,000 or 17,000 feet.

Q. Is not the term cerro applied indiscriminately to a hill or mountain (interrupted)——

A. Not to my knowledge.

202 Q. Wait a moment; is not the term cerro applied independently to a mountain or hill that stands distinctly marked and separately marked and not considered one of an immediately joined chain of high hills or mountains?

A. I think there would be a distinction; that that would depend on the elevation and the size of it.

Q. You say it is the elevation. What limit will you call an elevation in the earth standing by itself, well defined and marked; at what height will you stop calling it a cerro and commence called it something else?

A. Well, perhaps I would call cerros hills that rise up three, four, five, or six hundred feet above the level of the surrounding country.

Q. Now, Mr. Bonillas, you call them sierras when they are joined together in a range so as not to run down to a clearly defined base, when they make the form of a saw, and when they stand alone, whether a mountain a thousand feet or fifteen thousand feet high, they do not call them "sierras," the name being "cerros" because standing alone, distinct, and well defined?

A. As I said before, a high elevation of land, very high, standing out alone, I would not call a cerro, but I would call it a "montaña," or a "picacho" if it was pointed, if it terminated in a point.

Q. Would not it be a "picacho," no matter where it was, because it run to a point, whether standing alone or whether it was in a chain or range?

A. Yes.

Q. Well, you knew in this survey, in order to make it according

to the calls of the survey as made by the Mexican surveyors, that you had to ignore the term "Cerro San Cayetano" and your idea of its location in order to run this east line, didn't you?

A. I did not know at the time but what there might be another cerro called that.

203 Q. I speak now of what you understood then and what you understand now was known in that country as the "Cerro San Cayetano." You knew perfectly well in running that east centre line that in order to do so you had to ignore the object known in this country and in that country as the Cerro San Cayetano?

A. I knew there was no sense at all in going to the Cerro San Cayetano. It was an absurdity.

Q. You had to ignore it, in other words?

A. Yes, sir.

Q. That is it exactly. Now, in your survey you have got more land lying on the east of the north and south centre line than you have on the west, haven't you?

A. I believe so.

Q. Well, you construed these title papers yourself in making these lines. Now, reading from the second minutes of survey of stock farm, "Placed myself at the place pointed out as the centre of these lands, and, having set up the compass in good adjustment, a direction was taken toward the east, along which they went measuring and counting scrupulously twenty-seven cords, which terminated on a hill, it having been impossible to proceed further on account of the great roughness and inaccessibility of the timber and the abruptness of the hills. The parties in interest requested me to give them the remaining cords in the direction of the potrero, which lies to the west," did you pay any attention to that when you made your survey?

A. Yes, sir.

Q. Did you find in running your east centre line from the centre monument the condition of the topography of the country as stated in here to be true, and which is part of the question which I have just given you?

A. That feature I did not meet until I come to that monument. After that the country is very rugged and very rough—big depressions and hills.

204 Q. You didn't find that condition existing at the end of the measurement of the twenty-seven cords on the east centre line?

A. I didn't measure any twenty-seven cords. I said before I didn't take the courses and distances given in these title papers, because in my experience in making surveys I have found that it is useless—that it is losing time.

Q. In other words, then, by taking courses and distances and in this instance by taking the natural objects called for by name and known to you by that name you have not surveyed this grant?

A. In that instance of the San Cayetano hill.

Q. You therefore did not measure the distance from the centre

monument to the vado seco—you did not measure the distance from the east centre monument to the Cerro San Cayateno (interrupted)—

A. Yes. I didn't make the actual measurement, but I ascertained the distance.

Q. Now, can this grant be surveyed properly by taking only the courses and distances as well as the natural objects called for in this grant literally?

A. If you follow the courses and distances, starting from the point given, you would find out when you located it that it would be an absurdity.

Q. Very well, now, you take the natural objects at which it is claimed these monuments were erected and the measurements terminated, run to those natural objects independent of the measurements, and can you survey this grant?

A. Perfectly well.

Q. Have you done so?

205 A. In every case I have gone to the points described in the title papers, with the exception of the Cerro San Cayateno.

Q. Then the survey don't conform to the title papers according to the natural objects as they are laid down in the title papers?

A. It conforms as far as the intention was.

Q. The court will draw the intention. I want to know whether or not you undertook to make this survey by ignoring the courses and distances and running to the natural objects by name and known to you to be such by name in making your survey.

A. I run to the place where the monuments were.

Q. I am speaking now of the natural objects.

A. Those monuments are located in (interrupted)—

Q. No, sir; not monuments now, but natural objects.

A. I don't know what you mean by "natural objects."

Q. I mean such things as mountains, the mouth of the potrero and the vado seco.

A. I did run to those points.

Q. Did you run to the Cerro San Cayateno?

A. It was an absurdity to run to that.

Q. Answer my question. Did you run to the natural objects independent of monuments and independent of courses and distances that were called for as the outer limits of the boundaries of this grant?

A. I did, with that exception.

Q. Then you did not survey this grant according to the calls and the natural objects?

A. Why, of course, I did.

Q. How did you do it and not run to the Cerro San Cayateno?

206 A. Because it is an absurdity, and that is a mistake in that description.

Q. They say the measurement terminated at the Cerro San Cayateno.

A. No, sir; it doesn't read that way—that it terminated at the Cerro San Cayateno. You can see that there was a clerical error

or mistake there—whatever you may call it. They say the measurement terminated at the cerro, and being unable to go ahead on account of the roughness of the country, and the interested party in the survey having petitioned for the balance of the measurement towards the potrero side, and he considering this petition admissible and proper, he acceded to it, and then, they say, a monument was put at the Cerro San Cayateno.

Q. Now let me read it to you (reading): "A direction was taken towards the east, along which they went measuring and counting scrupulously twenty-seven cords, which terminated on a cerro." Is that right?

A. Yes, sir.

Q. (Continuing reading:) "And it having been impossible to proceed further on account of the great roughness and inaccessibility of the timber and the abruptness of the hills, the parties in interest requested me to give them the remaining cords in the direction of the potrero, which lies to the west, and, as I was satisfied the request was regular and admissible, I ordered placed and there was placed at the foot of said San Cayateno cerro, on the side that looks towards the south, another pile of stones as a monument."

207 Then you construe the first cerro as not conforming to the designation of that "said San Cayateno cerro"?

A. Yes, sir.

Q. They mean different things?

A. That name San Cayateno was stuck in there long after the description of the place was given, and I hold it is a mistake and an absurdity.

Q. It don't make any difference; this grant cannot be surveyed?

A. It can; yes, sir.

Q. According to the calls of natural objects, when the Cerro San Cayateno is one of them?

A. It can be surveyed according to the calls of the expediente, and I have done it.

Q. You answer my question. You will have to answer it, and you may just as well do it once for all.

By Mr. HENRY: I object to counsel lecturing the witness. It is not necessary.

By Mr. REYNOLDS: When the witness is dodging me I have a right to, and the court can see it.

By Mr. HENRY: I now object to counsel insulting the witness.

A. This is not the place to take offence, sir.

Q. I say this grant cannot be surveyed according to the calls of the natural objects without leaving out the Cerro San Cayateno and giving it some other construction?

A. Yes, sir.

Q. You haven't done it, have you?

A. I have left out that point; yes, sir.

Q. You have left it out?

A. Yes, sir.

Q. Then your survey is not correct if that point, Cerro San Cayateno, is one of the necessary calls.

A. I claim it is correct; yes, sir.

208 Q. I say it is not correct if that Cerro San Cayateno is one of the necessary calls.

A. That may be your opinion..

Q. I want to know whether it is or not. If that is necessary, your survey is not correct.

A. If it should be necessary.

Q. Well, put it that way, then. If it should be necessary, the survey is not correct.

A. In that sense, it is not correct.

Q. It is not correct, according to the natural objects, if the Cerro San Cayateno is one of the natural objects necessary in locating the grant by natural objects?

A. I claim that that survey is correct, sir.

Q. You haven't answered my question. You can answer it yes or no, Mr. Bonillas.

A. What is the question?

(The stenographer read the question, as follows: "It is not correct, according to the natural objects, if the Cerro San Cayateno is one of the natural objects necessary in locating the grant by natural objects?")

A. Yes, sir.

Q. Now, the papers that you had before you in making this survey were the papers of the Indian title of 1807?

A. Yes, sir.

Q. That was the proceedings which you used in making this survey?

A. Yes, sir.

Q. Did you use the proceedings of 1844 in making the survey at all, or were you simply using this of 1807?

A. Simply this of 1807, sir.

Q. You do not know, then, what the papers of 1844 of the grant called for at all in making the survey? You didn't consider it, in other words?

209

A. I did, sir.

Q. In what way?

A. My understanding is that the title of 1844 calls for exactly the same land that the 1807 title refers to.

Q. No more and no less?

A. No more and no less.

Q. Now, returning to the northwest corner monument of the Tumaçacori survey, which you have designated as the devisadero, and you say that is a look-out hill (interrupted)——

A. Not the northwest corner, sir.

Q. Northeast, I should have said. That was my mistake. You are right.

A. Yes, sir; that is the devisadero.

Q. I believe you stated yesterday, didn't you, that such things are never seen in a valley or known to be in the centre of a valley?

A. I said I did not expect to find that in the valley there. Being familiar with the valley there and that particular place, I did not expect to find it there.

Q. In other words, you knew you were not going to find the look-out hill in the valley there, from your former knowledge of it?

A. Yes, sir.

Q. You often find those hills in the centres of valleys?

A. Yes, sir; often.

Q. There is one right in sight in this valley here (indicating the valley of the Santa Cruz)?

A. Not that I know of.

Q. Right in sight from the window here?

A. Not the valley, sir.

210 Q. From which a man could look over all the country?

A. Not in the centre of the valley, that I know of.

Q. Well, practically so. They go both sides of it.

A. I think it is on the edge of the valley—on one side of it—on this one is, too.

Q. In running your north centre line from the center monument did you find a monument at its termination?

A. I did not run a line from the centre to the north.

Q. Well, triangulated it, or whatever you please, in establishing your north centre line. These lines were established by triangulation, were they not?

A. Yes, sir.

Q. In establishing your line from the centre monument to the north centre monument, at the termination of it did you find a monument?

A. I didn't determine what the distance was.

Q. Did you look for a monument at all at the north centre point?

A. Yes, sir.

Q. Did you find it?

A. I did not.

Q. How close to Calabasas did you establish this north centre monument?

A. Pardon me.

Q. I say, how near to Calabasas did you establish this north centre monument?

A. I couldn't tell you the exact distance. My map will show it if you apply the scale.

Q. Does the ruins of Old Calabsas put it that way?

A. Which north centre monument do you refer to?

Q. I am only talking now of the estancia.

211 A. I established the north centre monument of the estancia south of the ruins of Old Calabasas, on the upper side, at the mouth of the gulch, close to and adjoining this old place of Calabasas.

Q. Now, I call your attention to the proceedings of the survey of

the stock farm: "I put myself at the place pointed out for the centre of these lands, and, having set up a compass in good adjustment, a direction was taken towards the north 80 cords, which were measured and counted with great scrupulosity, terminating at the same monument put up in the survey of the agricultural lands, both being in one body." You did not find that monument which was supposed to be a common monument between the agricultural lands and the stock farm?

A. No, sir.

Q. Did you find any evidences of one having been there?

A. No; I did not.

Q. In making this survey you paid no attention to the Calabastas except so far as it was called for by the south centre line of the survey of the agricultural lands called as terminating at the edge of the Sonoita cañon near the ruins of Old Calabastas?

A. Not the Sonoita cañon.

Q. Of the cañon. Strike out the word "Sonoita."

A. Gulch, it means.

Q. Well, gulch. That was the only bearing that Calabastas had on your survey at all, was to designate that point?

A. Yes; as to that line; as to the designation of that line.

Q. The balance of the survey was run independently and
212 without any reference to Calabastas at all?

A. Yes; as far as the location of the points called for was concerned.

Redirect examination:

Q. (Handing witness a book.) Will you examine that book and state what it is?

A. That is Sloane's Neuman & Barrett's Spanish Pronouncing Dictionary.

Q. What is the date of its publication?

A. It is called "Velasquez" dictionary.

Q. Do you know whether or not it is considered a standard dictionary?

A. It is very good; a very good Spanish and English dictionary; yes, sir.

Q. Will you refer to the word "loma" and give the definition given there?

A. (Referring and reading:) "Loma: Rising ground in the midst of a plain; a little hill or hillock." That is the first definition. The second is "slope."

Q. Now refer to the word "cerro."

A. (Referring:) "Cerro: Hill or high land;" second, "Neck of an animal."

Q. Only give those that relate to land.

A. "Cerro en riscado, a steep and inaccessible mountain."

Q. Now the word "montaña."

A. "Montaña: Mountain; mount; see monte; high lands; a ridge of mountains."

Q. What is the word "monte"?

A. "Monte: Mountain; hill; mount; a large hill; a vast protuberance of the earth."

213 Q. Now the word "pecacho."

A. (Referring:) "Pecacho: Top; summit; sharp point of anything."

Q. Now the word "tendida."

A. (Referring:) "Tendido or tendida; tendido: A row of seats for spectators" (interrupted)——

Q. Only those that refer to land.

A. "Roof of a house from the ridge to the eaves; floor carpet; a portion of lace wrought in one pattern." That is all that could relate to land.

Q. Now the word "rentas."

A. (Referring:) "Renta" (first definition): "Rent; profit; income." (Second definition:) "Rent; money paid for anything held of another." (Third definition:) "Tax; contribution; revenue."

Q. Now "temporalities."

A. (Referring:) "Temporalidad; temporality: Secular revenues of the clergy; temporal concerns."

Q. Now "secular."

A. (Referring:) "Secular: Happening or coming once in a century." Second definition: Secular; not spiritual or ecclesiastical." Third definition: "Not bound by monastic rules;" "lay; layical."

Q. (Handing witness a paper.) This is the titulo of 1807 that has already been offered in evidence. Will you turn in that to the description of the east centre monument and state what it says in reference to the termination on account of the roughness of
214 the hills? Read what it says in the Spanish first and then translate it.

A. (Reading:) "En el antiguo y decierto Pueblo á Mission de Guevavi á quince dias del mes y ano expresados Y el nominado Jues Comisionado Agrimensor Don Manuel de Leon acompanado de los oficiales nombrados para ella de las partes interesados y testigos de mi assa. Me constitu en el punto Centrico señalado de estas Tierras y puesto el abujon bien ordenado se tomo el viento del Oriente para el qual se fueron midiendo y contande escrupulosamente viente y siete cordeles que remataron y wn un Cerro y haviendo Sido imposible pasar adelante por lo mus fragoso é inasesible de montes escarpado de Cerros me pidieron los interesados que los cordeles restantes selos diese por el rumbo del Potrero que se halla rumbo al poniente y conformandome con esta solicitud como tan regular y admisible mande poner y se puso al pie de dicho Cerro de San Cayetano por el costado q. mira al sur otro monton de Piedras en señal de mojonera."

Q. What does it mean from the word "monte" on?

A. On account of the roughness and inaccessibility of mountains and rough hills.

Q. Does the word "timber" appear there anywhere?

A. The word "montes" may mean woods, but in this case my interpretation of it is "rough, mountainous hills."

Q. Is there a comma there in the original after the word "monte"?

A. No, sir.

Q. Would it make any difference if there was?

215 A. Well, it might; you might construe it as timber lands or woods, but I would not even then.

Q. (Hand- witness a book.) What book is that?

A. Nueva diccionario de la Castellana Lengua.

Q. Will you turn to the definition of the word "tendida"—first, what is this book (handing witness another book)?

A. That looks to me like the dictionary of the Spanish academy. (Examining the same:) Yes; it is; it is the dictionary that includes the last edition of the Spanish academy.

Q. Now turn to the word "tendida."

A. (Reading:) "Tendido or tendida: Extenso; largo. Despligado."

Q. Only give that that applies to land, and give the English of it.

A. "Tendido: Extensive; long. Despligado"—that means spread out—"a part of the roof of a house from the ridge to the eaves." There are other definitions there, but they do not apply.

Q. What book is this (handing witness another book)?

A. That is the dictionary of the Spanish language of Salvar.

Q. Is Salvar a well-known writer?

A. His dictionary is very famous, to my knowledge.

Q. Turn to the word tendido and translate it.

A. (Reading:) "Tendido: The flooring with seats which is put up to watch the bull fights; slope."

Q. How are those seats actually put up at those bull fights?

A. Generally put sloping, lower down in front, sloping down in front, so that people will be able to look over the others.

216 Q. Give the other definitions there.

A. The others have no bearings on the subject. Here — is again—"part of the roof from the ridge to the eaves; sloping down."

Q. What do you understand the meaning to be of "Mesa muy tendida" in this title in describing the place where the east centre monument was?

A. I understand that to be, from the meaning there and from the experience I have had in reading these old titles, a very gradually sloping mesa or table-land.

Q. Does that description correspond with what you found there?

A. I think it does.

Q. Do you know whether the Sonoita canyon was ever heavily timbered or not?

A. Not to my knowledge. I have no knowledge of it.

Q. Do you know anything about the traditions about it?

A. Yes, sir; I have heard some people say that, like all the rest of the canyons, it had a great many trees growing in it.

Q. Will you describe that San Cayetano mountain?

A. Where this monument is located?

Q. No; the San Cayetano mountain.

A. That San Cayetano mountain is situated about east of Palo Parado, a well-known point in the agricultural lands of Tumacacori, in the valley of the Santa Cruz, and it runs down in the direction of where the Calabasas hotel is, where the Sonoita canyon
217 empties into the Santa Cruz valley.

Q. What is the size of it?

A. Quite a little chain of mountains—quite a ridge; very high ridge.

Q. How does it compare with the Santa Catalina over here in size?

A. It is very much smaller.

Q. How does it compare with the hills here of Tucson?

A. It is larger—higher—I think, than those hills. It extends northerly and southerly.

Q. Is there a place called Palo Parrado on the Tumacacori grant?

A. Yes, sir; Palo Parrado.

Q. Where is that with reference to the Tumacacori church?

A. It is up the valley from the church; between the old church and Calabasas.

Q. Is it shown on your map?

A. Yes, sir; it is shown here.

Q. Did you make that map yourself from actual surveys made by you?

A. Yes, sir.

By Mr. HENEY: We offer that map in evidence. The map to which I refer is the map attached to the report of Mr. Bonnilas on file in this case.

By Mr. REYNOLDS: I object to the report going in. There is no objection to the map.

By Mr. HENEY: The map is all I have offered. It was filed with the clerk March 23, 1895. If there is any objection to it in this shape the other copy of the map may go in instead.

Said map was thereupon marked Exhibit "I."

218 Q. In making surveys in Sonora most of the title papers call for monuments made of mortar and stone, don't they?

A. They call for monuments simply.

Q. Do any of them call for monuments made of mortar and stone?

A. Do you mean at the time the survey of the grants were made?

Q. Yes, sir.

A. No, sir; they do not; they call for monuments.

Q. There is a law requiring them to be of mortar and stone?

A. Yes, sir.

Q. Is that law in force yet?

A. I couldn't tell whether it is or not.

Q. In making these surveys of grants in Sonora how many monuments did you find that were made of mortar and stone?

A. Very, very few; very few.

Q. Comparatively speaking, with the whole number that you saw about what percentage were mortar and stone?

A. Perhaps one or two per cent.

Q. Have you ever examined the survey that was made by Mr. Harris, under the directions of the surveyor general of Arizona, in 1880? I think the date of it is about that time.

A. Yes, sir; I have had occasion to see a map.

Q. Do you know whether or not in that map Mr. Harris took the same natural objects for the north centre monument and in locating it that were taken by yourself?

219 By Mr. REYNOLDS: That is objected — as wholly immaterial, the survey never having been approved.

By Mr. HENEY: The testimony is only offered for the purpose of showing that these places were generally known and taken by everybody as those particular places by names. It was not offered to serve any other purpose.

Objection sustained.

Q. In making these surveys for the government of Sonora where there were demasias, what was the arrangements between the government and owners in regard to those demasias?

Q. Do you mean at the time the surveys were made?

Q. At the time you were making the surveys.

A. I have been making surveys for the interested parties in these grants with appointments from the federal judge, who is (interrupted)——

Q. What I mean now is, what was the arrangement as to demasias or excess land called for in the title papers that was within the boundaries?

A. The laws bearing on such matters give the owners of those grants the first privilege to acquire those demasias, and not only the first privilege, but makes a reduction of one-half or one-quarter of the tariff prices for lands to the owners of those demasias, and in case those demasias are petitioned for by other parties, still the owner has the first privilege of buying them by paying the full tariff price and the expenses incurred in making the surveys.

Q. Do you know Mr. Colin Cameron?

A. I do.

220 Q. Do you know Mr. Bayze?

A. I do.

Q. Did you ever take either or both of those gentlemen to the monuments which you have designated in the map here as the — or did you ever accompany them?

A. I have.

Q. You have accompanied them to the monuments designated in this map as the monuments of the Tumacacori and Calabasas grants?

A. Yes, sir.

Q. To each and all of those monuments?

A. To some of them—to the monuments called for in the title papers of this grant.

Q. I mean to the monuments called for in the title papers. Did you take them to all the monuments called for in the title papers?

A. I have.

Q. Did you point out those monuments to them as the monuments you had accepted and taken as the basis of this map?

A. I have.

Q. When did you do that last? Can you give the date?

A. I believe it was on the 16th, on Sunday, if that was the 16th, of this month—the 16th or 17th, whichever it was.

Q. Was any one else with you?

A. Yes, sir.

Q. Who?

A. Mr. Faxon and yourself.

Q. I just want to fix the particular time. How do you account for the fact that you found no north centre monument of the Tumacacori grant at the place (interrupted)—

By Mr. REYNOLDS: That is asking for the mere opinion of the witness. He says he did not find it, and that is the fact.

221 By the COURT: Ask the question subject to the objection.

A. The monument is said to have been placed in the valley, and in the course of so many years I naturally suppose that floods and so on coming over that valley would destroy any monument of loose stones put up there.

Q. Will you state, generally, what the action of the floods in this Santa Cruz river is as to the frequency of their occurrence and in a general way how they occur?

A. I know very large floods have come from this valley and this city has witnessed some of them, and they destroy and cut up the land and tear down the trees and are very destructive in their effect.

Q. Is it an unfrequent occurrence for these floods to come?

A. They generally have them every summer during the rainy season.

Q. Do you know what causes such large quantities of water to come so suddenly?

A. Well, the rains drain over quite a large country.

Q. What is the character of the rains with reference to the amount of deposit of water within a given time?

A. The summer rains here are very heavy—torrential.

Q. Have you studied Spanish to any extent other than in your education in the schools in Magdalena prior to coming to Tucson, if you did study then?

A. I have been studying it all my life, sir; have been reading Spanish and studying the language all my life.

222 Q. Did you ever teach it?

A. I have.

Q. For how long?

A. I taught it in the public schools of this town for a number of years, and I taught private classes here.

Recross-examination.

By Mr. REYNOLDS :

Q. Mr. Bonillas, get the original title paper of 1807.

A. I have it.

Q. Turn to that part which you were using awhile ago, the second minute of the survey of stock farm—that part of it which you translated awhile ago.

A. I have it.

Q. I wish you would translate literally to me now, without regard to the topography of that country, but literally as you find it there, commencing at the words “placed myself at the place pointed out as the centre of these lands;” that is the translation of it?

A. “I placed myself at the centre point pointed out of these lands, and, having placed the compass in good adjustment, the wind of the direction of the east was taken, along which they went measuring and counting scrupulously twenty-seven cords, which ended at a hill, and, it having been impossible to pass ahead on account of the roughness and inaccessibility of rough mountains and of hills, the interested parties asked me that the remaining cords should be given them towards the direction of the potrero, which is the bearing towards the west, and I, being satisfied with this petition
 223 as regular and admissible, I ordered to be put and there was put at the foot of said Cerro de San Cayetano on the slope—on the side which looks towards the south—another monument of stones as a witness, or for a monument.” Shall I go ahead, sir?

Q. What word is it there that you translate mountains?

A. Montes.

Q. What word is it you translate “rough”?

A. “Fragoso escarpado;” cragged; rough.

Q. Is the word montes plural?

A. Yes, sir; it is plural.

Q. Is fragoso in the singular?

A. It is in the singular; yes, sir. It is preceded by “Muy fragoso é inasesible de montes,” which means the very roughness and inaccessibility of mountains and craggedness of hills. That is about the sense of it.

Q. Now turn over to the statement of the first witness, Apodaca.

A. Yes, sir; I have it.

Q. Now translate to me that portion of the answer of the witness commencing after the words “Yerba Buena;” I think it is in the first answer.

A. He is asked if he knows how far the boundaries reached toward the south.

Q. Yes; after the words “Yerba Buena” there?

A. His answer you want?

Q. Yes, sir; the answer to the first question.

A. “That in the direction of the south, or the side where Guevavi stands, said mission of Tumacacori is bounded by the ranch of Buena Vista, known as the ranch of the Romero’s, which the

224 exponent is interested in said ranch of the Romero's"—I am making a literal translation of this.

Q. Very well.

A. "And that he knows that the monuments which divide the lands of Tumacacori and those of the Romero's exist up to the present day. Said monuments standing beyond or above the site or place called the Yerba Buena and that towards the potrero side—towards the direction or in the direction of the potrero—he knows and swears that the monuments were placed above the cienega grande, or large marsh, and that in the direction of the east the monuments were standing at the Quitaca canyon on a mesa that slopes—on a very gradual sloping mesa" (interrupted)—

By Mr. HENY:

Q. Excuse me; you said Quitaca.

A. I meant Sonoita.

By Mr. REYNOLDS:

Q. Now, in your definitions or translations, what word is it that you translate "sloping"?

A. "Muy tendida."

Q. Is tendida there an adjective or noun?

A. It is an adjective.

Q. The definitions you gave us awhile ago were the definition of the noun, were they not?

A. No, sir; not that I know of.

Q. The definitions that you were giving awhile ago from the book, wasn't it the definition of the noun tendida?

A. Yes; in one or two cases it was.

Q. Do you know from what that word is derived?

225 A. I couldn't tell you.

Q. Do you know whether it was a Latin derivation or not?

A. I do not know, sir.

Q. Is it not the past participle of the verb "tender"?

A. Yes, sir.

Q. This object which the counsel on the other side examining you called the San Cayetano mountain—that is one commonly known and designated as the Cerro San Cayetano that you have reference to when you spoke of the San Cayetano mountain?

A. Yes, sir.

By Mr. HENY:

Q. Do you know whether it was known by that name or not in 1807?

A. I do not, sir.

Q. Do you know where the Buena Vista ranch is?

A. I do.

Q. Where does it lie from the Tumacacori and Calabasas?

A. Up the river.

Q. Does it join it on the south?

A. Yes, sir; I think that both grants overlap.

Q. To any extent?

A. Not to a great extent.

By Mr. REYNOLDS:

Q. Your expediente says they adjoin?

A. They say they adjoin; yes, sir; but by overlap-ing I mean the Buena Vista grant as it is today under the new title that it has; that is what I mean; the title, I believe, issued in 1833.

Q. Was the Buena Vista ranch title issued in 1833?

A. Yes, sir; but was abandoned and a new title issued in
226 1833, and I refer to the measurement of that grant.

By Mr. HENNEY:

Q. By overlapping, how much do you mean they overlap?

A. I have not calculated the area, but there is a stretch (inter-
rupted)——

Q. How far in linear measure does it come up in?

A. Perhaps a mile and three-quarters or two miles.

227 COLIN CAMERON, a witness previously called and sworn on
behalf of the petitioner-, is now recalled for further direct ex-
amination by Mr. Heney:

Q. Just take that map (Exhibit I). Are you acquainted with any of
the monuments of the Tumacacori and Calabasas land-grant claim?

A. Yes, sir.

Q. Are you acquainted with any of the natural objects called for
in the titulo of this claim?

A. Yes, sir.

Q. Do you know where the devisadero or lookout hill is which is
called for in the title papers in relation to the north centre monu-
ment?

A. Yes, sir.

Q. How long have you known that place?

A. Since 1883.

Q. Who first pointed it out to you?

A. F. H. Watts.

Q. Who was he?

A. At that time he was a rancher.

Q. To what extent is that place known as the devisadero?

A. It is known by everybody in that country.

Q. Have you ever been on top of that devisadero?

A. Yes, sir.

Q. Is there any monument there?

A. Yes, sir.

Q. What is the appearance of that monument?

A. It is an old monument.

Q. When did you first see it?

A. 1883, in October.

Q. Were you up to the monument at that time?

A. Yes, sir.

Q. By "old monument" what do you mean?

228 A. Well, a pile of stones, you know, that has been put there a long time ago; you could see that. Nobody had been to it or disturbed it for a long time previous, and grass and weeds were growing out of it at that time a great deal more than there is a- present on account of the growth in this country; for the last few years the cattle have eaten all the grass and stuff out of these monuments.

Q. That is known as what monument of the grant?

A. The northeast.

Q. Did you ever go to the northwest monument?

A. Yes, sir.

Q. This devisadero that you speak of and the monument that you speak of there, is that the one which was pointed out to you lately by Mr. Bonillas?

A. The same; yes, sir.

Q. Now, the northwest monument. When did you go to that first?

A. Well, I think that was two or three months afterwards; maybe in January. I can't tell the exact date, but a short time afterward.

Q. And in that the monument which has been pointed out to you as the northwest monument by Mr. Bonillas?

A. The same one.

Q. What appearance did it have at that time?

A. It looked the same as it does today—an old monument.

Q. What kind of a monument?

A. An old monument; has the appearance of age. The stones are all the same color on the outside.

Q. Do any of the stones show any appearance of have marks on that as if picked up out of the ground recently?

A. None at all.

Q. Do you know where the east centre monument is of the Tumacacori?

A. Yes.

229 Q. Did you ever go to the monument there?

A. Yes, sir.

Q. What appearance has it?

A. It is nearly covered by the sand and truck that has been carried down out of the cañon that comes into the valley there.

Q. Is that the one that was pointed out to you by Mr. Bonillas?

A. That is the same one.

Q. Pointed out to you as the east centre monument?

A. Yes, sir.

Q. When did you first see that?

A. I saw that at the time Mr. Roskrige was down there making that first survey. I think it was in 1890.

Q. Have you ever been to the west centre monument?

A. Yes, sir.

Q. When did you first see that?

A. At that same time, in 1890.

Q. Was that the same monument pointed out to you by Mr. Bonillas as the west centre monument?

A. Yes, sir.

Q. As shown in his map?

A. Yes, sir; the same one.

Q. What appearance has that monument?

A. Well, it is as old monument.

Q. Do you know where the Tumcacaori church is?

A. Yes, sir.

Q. About how far is that from a line which would connect the northeast and northwest centre monuments?

A. Oh, something about a mile and a half.

230 Q. From this devisadero that you speak of what sort of a view of the valley do you get?

A. Well, you can look all over the whole business clear far as you can see and down the valley towards Tubac.

Q. What is the average width of that valley along there, in a general way?

A. It is not a very wide valley. I guess about the widest place is where the devisadero is.

Q. And about how wide would you say it is there?

A. Of course, in guessing a man is liable to guess a long ways out of the way. I don't know, but it might be about a mile wide. Plague if I know, but I have been there many times.

Q. Well, is it as much as two or three miles?

A. Oh, no; not that much; it is just a narrow valley.

Q. And from the devisadero you can see up and down both ways?

A. Yes, sir.

Q. Can see the town of Tubac?

A. Oh, yes, sir.

Q. And see New Calabasas?

A. No; I don't believe you can.

Q. Is that due to its distance?

A. Well, I think Calabasas sets in a flat place—in a hollow—and the mesa runs down there. All there is there is the hotel, and I think that is down behind the ridge.

Q. Do you know where Old Calabasas —?

A. Yes, sir.

Q. How long have you known that place?

A. Since February, 1883.

Q. Who pointed that out to you?

231 A. I went down on the railroad and stopped at that hotel, and I don't know who did *did* take me over there and show it to me now.

Q. Is that the place pointed out to you by Mr. Bonillas as Old Calabasas?

A. The same place.

Q. Do you know to what extent that place is known as Old Calabasas?

A. By everybody.

Q. You have heard it generally spoken of as that?

A. Everybody calls it that; yes, sir.

Q. Do you know where the place called Guebabi is?

A. Yes, sir.

Q. Do you know where the mission of Guebabi is?

A. Yes, sir.

Q. Do you know the old ruins of Guebabi?

A. That is the same thing as the mission.

Q. Well, the place you know—is that the place pointed out to you by Mr. Bonillas as the ruins of Guebabi?

A. The mission of Guebabi?

Q. Yes, sir.

A. It is.

Q. Do you know where the Meadow del Rio of Guebabi is?

A. Yes, sir.

Q. Is that the place that was pointed out to you by Mr. Bonillas?

A. The same place.

Q. Where the three big cottonwood trees are?

— Well, three, four, or five, whatever it is; the field joins it on the south.

Q. What is the character of the river at the point of the old ruins of Guebabi?

A. You mean the river itself?

232 Q. The character of it, as to its size, and so on—its sides.

A. The mesa comes very close. There is a rocky cliff that the ruins is on, and just beyond it, a little way up the river, there is another like that. The river is very narrow there.

Q. Is there any meadow at all right at that point?

A. None at all.

Q. Is the meadow you speak of the first meadow going down the river from the old ruins?

A. Yes, sir; the first place any water could be got at to farm.

Q. How long have you known that place by that name?

A. Since September or October, 1883.

Q. Do you remember who pointed that out to you?

A. Mr. Watts was the first person that called my attention to it.

Q. Do you know to what extent it is known by that name?

A. By everybody.

Q. Do you know where the east centre monument is of the Calabasas, and did you ever go to it?

A. Yes, sir.

Q. Describe that, please, and where it is.

— Well, from the Sonoita cañon it is close by the cañon at the edge of a mesa and just behind or in front of a big hill.

Q. What part of the Sonoita cañon is that? What place is there there to designate it?

A. It is pretty close to the place known as Sanford's Station.

Q. What is the character of that particular point?

233 A. The Sonoita cañon all the way up and down is very narrow. Right there years ago, when I first knew it, San-

ford had a field there and a sheep corral there, but at the present time it is all grown up with mesquite and it is washed out.

Q. Was there ever, to your knowledge, any timber growing in the cañon along that point?

A. Yes, sir; all along that river it used to have trees in it.

Q. What do you know historically about timber in that cañon?

A. Well, I have read in Barrett's history of the survey that when he attempted to go down it (interrupted)——

Q. What survey?

A. The boundary survey.

(Continuing:)——that they could not go down there; that they undertook it and could not get through with their teams and had to go by way of the Babacomari and the Canilla and by way of Santa Cruz.

Q. They could not get through there on what account?

A. On account of the timber and undergrowth, and I saw the timber myself, and the trees lay there yet in 1883. It was the cause of washing out that railroad much, and I see the men at work there. I don't know who was roadmaster at that time, but they sawed the trees up into short pieces so they would go underneath the bridges, and the floods carried them away. The stumps are there yet, and blocks of wood that have been carried out on the sides in time of high water are there yet.

Q. In going from the meadow of Guebabi to the east centre monument what direction do you take?

234 A. It is east, but the absolute direction I do not know. I would call it east.

Q. What is the character of the country in going from there to where this monument is, from the meadow to where the east centre monument is?

A. Well, you go up a cañon and it narrows, and at last you come onto mesa lands, if you go on horseback. You follow up that main cañon for quite a distance, and at last there is another smaller cañon that leads to the left as you go east, and that cañon brings you right on the mesa land where the monument is.

Q. Describe that mesa.

A. Well, when you are at the monument looking down towards Guebabi it is a drain; it goes off that way gradually. It is a sloping mesa. This is the place where the monument is, and that is about the highest place of it, and on the side towards the Sonoita cañon it drops right off and on the other side it goes off more gradually—inclined.

Q. How is it, as to width, as compared with the length of it?

A. It is not as wide at all.

Q. What would you call it, if not wide at all?

A. Well, narrow.

Q. Well, is it narrow?

A. Yes; it is narrow.

Q. Now, just after the mesa drops off, then what is the next natural object of any note that you find there?

A. That hill.

Q. Describe that hill.

235 A. Well, it is a pretty big hill for a fellow to walk up it. I don't know how high it is, but it is very steep and rounded over the top, and part of the way up it is very rocky and right on top it is not quite so stony.

Q. What is the character of the country from there on in an easterly direction?

A. Well, it is rough and crooked as it can be, one ravine after another, and the sides of them are very rocky and steep, all broken up.

Q. Do you know whether you can see that cerro or that hill that you speak of *not* from the vicinity of the meadow of Guebabi?

A. You can see it.

Q. What other monuments of the grant can you see?

A. You can see the south centre and the west centre. I don't know whether you can see Calabasas or not; I hardly believe you can, but you can see the mouth of the potrero.

Q. When did you first see that east centre monument?

A. I could — fix that date exactly, but it was perhaps in 1885.

Q. What is the appearance of that monument?

A. It is an old monument.

Q. When you first saw it?

A. It looks just like it does today, an old monument.

Q. Do you know where the vado seco is?

A. Yes, sir.

Q. In what direction is that from the Guebabai ruins?

A. It is up the river.

Q. The general direction, I mean.

A. South.

236 Q. Do you know of any monument in the vicinity of the vado seco that is referred to in the title papers of this grant?

A. Yes, sir.

Q. Will you describe where that monument is?

A. Well, it is *is* on the edge of a mesa also—just on the left-hand side of the old Santa Cruz trail as you are going south—and just before you come into the dry wash that comes from the Patagonia mountains.

Q. When did you first see that monument?

A. I saw that monument first in 1890.

Q. What was the appearance of that monument when you first saw it?

A. It was an old monument, just right on the edge of the hill where the hill falls off, and that monument wasn't very high, but the stones were sunken much in the ground. It was an old, old monument.

Q. What is this vado seco?

A. Well, they told me (interrupted)—

Q. One moment. First, is that the monument that was pointed out to you by Mr. Bonillas as the monument near the vado seco?

A. Yes, sir.

Q. And the east centre monument spoken of, is that the one that was pointed out to you by Mr. Bonillas?

A. Yes, sir; the same one. That is the same one I had always known as the east centre monument.

237 Q. Now what is the vado seco?

A. I was first told by some fellow that translated that it was a hollow or low place, but I have learned since that it means a dry ford where there is no water running in the river.

Q. What sort of a place is that called the Vado Seco?

A. It is just a low place or dry place in the river, no water flowing there except in flood time. The river is very wide and the sand is deep there and the wagon road crosses the river at that particular place—the Santa Cruz wagon road.

Q. Has it been so for any length of time?

A. Always.

Q. Do you know the place called the Yerba Buena?

A. Yes, sir; very well.

Q. Where is that from the vado seco—in what direction?

A. A mile further up the river.

Q. What general direction?

A. South.

Q. Is that the place pointed out to you by Mr. Bonillas—pointed out as the place taken by him?

A. Yes, sir; it is known by everybody in that country by that name.

Q. And the vado seco also?

A. Yes, sir.

Q. Do you know the place called the Vado del Apache?

A. Yes, sir.

Q. Is that the place pointed out to you by Mr. Bonillas as the place taken by him as the Vado del Apache?

A. Yes, sir.

Q. Where is that from the Yerba Buena?

A. South.

Q. Do you know a place called the Cienega Grande of the Potrero?

238 A. Yes, sir.

Q. Where is that by natural objects that you can identify?

A. It is north of Nogalitos and immediately south where the house was that they were talking about the other day; the Pete Kitchen ranch-house, the headquarters ranch of the potrero now.

Q. Do you know of a monument there which has been on that map designated as the monument above the Cienega Grande?

A. Yes, sir.

Q. How long have you known that monument?

A. I have known that since 1890.

Q. Who pointed it out to you?

A. I don't know exactly who pointed that out. We had the title papers, and were hunting for a monument there around the mesas right above the Cienega Grande, and that monument was found there.

Q. What is the appearance of that monument as to age?

A. It was an old, old monument, fallen down. Do you mean at the present time or when I first saw it?

Q. The first time.

A. It was an old, old monument, with stones that are now piled on top of it lying at the base of it, and more than half covered up in the earth, as the present appearance will show they were pulled out of the ground; but the base of the old monument there now shows that it is an old monument and sunk in the ground.

Q. Is there any monument at the Vado del Apache?

A. Yes, sir.

239 Q. What is the appearance of that monument?

A. It is an old monument also. I saw that in 1883, and at that time it had a United States Government survey stake in it the same as it has today or had the last time I saw it. That is what they told me the stake was, and I see those marks on the side of it that Government surveyors always put on a stake. It says "T. C. of P. C."

Q. Do you know where the west centre monument of the Calabazas grant and Guababi grant, as it is called?

A. Yes, sir.

Q. Where is that?

A. Well, it is on the highest loma that you can see from the vicinity of the potrero.

Q. Have you looked at that hill more than once?

A. Many times.

Q. Is there any difficulty about distinguishing which is the highest hill?

A. Not in the least.

Q. When did you first see that monument on that hill?

A. In 1890.

Q. Who was with you then, do you remember?

A. I don't remember exactly who was along, but several.

Q. What was the appearance of that monument when you first saw it as to age?

A. Well, just the same as it is today. It lies there half covered up in the ground and with grass.

Q. What would you say as to age?

A. It is an old monument, very old. The monument immediately on top of the hill, the centre monument, is an old monument. There has been one built close by it recently, but that is not the one I refer to.

240 Q. Where does it lie with reference to the top of the hill?

A. I guess it would be north; kind of back of it a little distance; a couple of times the length of this room, perhaps; just on the slope of the hill.

Q. Do you know the exact size of the burying ground of the Tumacacori church?

A. Yes, sir.

Q. What is it?

A. One hundred and fifty feet long and sixty feet wide. I got it

by stepping it; I didn't measure it with a foot-rule, but that is close enough.

Q. Where is that burying ground with reference to the church?

A. It is this side of the church; north of the church.

Q. With reference to the front of the church?

A. Why, behind the church that would be.

Q. In the rear of the church?

A. In the rear of the church; it is built right up to it; against it. The walls of the church form the south side of the burying ground.

Q. Have you been over this grant and are you familiar with the lines of the grant to any extent?

A. Yes, sir.

Q. This survey that is made by Mr. Bonillas and is represented on that map; what is the effect of that in regard to the agricultural lands of the Tumacacori?

A. You mean whether it encloses them or not?

Q. Yes.

A. Just about; it takes in a little bit of the points of the
241 mesas or foot-hills where they slope towards the valley. It takes them all in, I believe.

Q. What is the character of the lands embraced within the Guebabi?

A. You mean whether it is all pasture lands or agricultural?

Q. Yes, sir.

A. Very little agricultural in that; nearly all rolling mesas, more or less steep.

Q. When I have used the word in my questions and when you have used the word "Calabasas" grant, what did you understand it to mean?

A. I suppose it applies to the whole thing, the Tumacacori and Calabasas; they always speak of those that way.

Q. I mean in answering my questions did you understand me to mean the Guebabi?

A. Yes, sir; that is what I did.

Recess until 2 o'clock.

By Mr. HENEY: While waiting for the witness we will go on with the documentary evidence. I would like the record to show that the titulo of 1807, which was introduced in evidence, and that of 1844 came from the possession of the surveyor general of Arizona.

By Mr. REYNOLDS: We want him to show that it was filed by the claimants themselves and that it came from private custody, and that it was simply filed there by them by virtue of the law of 1854.

By Mr. HENEY: Yes; that is all we want.

242 By Mr. BARNES: We simply wish it to appear that it was filed with the surveyor general concurrent with the filing of the petition by Gandara in 1864.

By the COURT: Very well, that may be so entered.

By Mr. HENEY: The deed of 1856 is on the back of a certified

copy of the testimonio. That is from the possession of the surveyor general also, marked as filed June 9, 1864, with Levi Bashford, surveyor general for Arizona, that being the date of the petition of Gandara. We also offer certified copy of the deed of 1869, filed December 22, 1869, by John Wasson, surveyor general. We offer the certified copy of the record of the deed in Guaymas.

By Mr. BARNES: We object to the authentication of, but admit the other part. We understand that they are offered provisionally only.

By Mr. HENEY: Yes, sir.

Direct examination resumed:

Q. At the time you testified having first seen these monuments were you in the employ of the then claimants of this grant?

A. No, sir.

Q. Did you at that time or have you at any time owned any interest in this grant?

A. No, sir.

Q. Are there any evidences upon the grant of sheep ever having been kept on the grant?

A. Yes, sir.

243 Q. Where and what is it?

A. The remains of the places where they were herded or where they slept at night—bedded down—at Calabasas and at the old mission of Guebabi or near there, and also at the Yerba Buena.

Q. What do you know about the cutting of wood on this grant?

A. Well, I know that they are cutting it all off as fast as can be done. The claimants have never been able to stop them because when they tried to do it the courts held they had no jurisdiction and they said they were cutting it on grant lands when the government got after them, and the wood goes away and that is one of the chief values of the property.

Q. What is there there now that is called for by the description in the title papers near Old Calabasas?

A. You refer to that gulch near there.

Q. Is there a gulch there; and, if so, describe it and how close it is?

A. Near the ruins of Old Calabasas there is a gulch very deep and very narrow, running into the valley of the Santa Cruz from the east.

Q. How close to the ruins of Calabasas?

A. About one hundred and fifty yards—maybe not that far—perhaps a hundred yards; just a little distance; you could
244 throw a stone to it, I suppose.

Q. What relative position does that occupy as to the agricultural lands of that valley of the Santa Cruz and along there—the lands comprised in this Tumacacori grant?

A. From that point, drawing a line across the valley, there is more agricultural lands down the river than there is up it; the valley is wider.

Q. To what extent does the valley narrow at that point?

A. The foot-hills run in very much closer to the river bed than below. Right at this point the valley widens out, perhaps, four times as wide as it is above.

Q. (Exhibiting a photograph.) Examine that photograph and state what it is if you know.

A. That is a photograph representing the east centre monument of the Guebabi.

Q. Is that the one marked "D 5" by the clerk?

A. Yes, sir.

By Mr. HENRY: I now offer that photograph in evidence.

Q. And this one (exhibiting photograph marked "E 5")?

A. That is the photograph of that high hill immediately east of the monument, right near (interrupted)——

Q. Which do you mean?

A. East centre monument.

Q. Of which grant?

A. Of the Guebabi grant.

Q. (Exhibiting photograph marked "W.") Now examine this one.

A. That is a photograph of one of those dead mesquite trees that is west of the Tumacacori church.

By Mr. HENRY: Photograph just identified is now offered in evidence.

Q. (Exhibiting another photograph.) What is that?

A. This is a picture of another one of those trees.

Q. The same place?

A. Yes, sir.

By Mr. HENRY: This photograph is also offered in evidence.

Q. Examine this (exhibiting photograph marked "H 5").

A. That is a picture of the west centre monument of the Guebabi, looking north, with the Santa Rita mountains in the distance.

Mr. HENRY: That photograph is offered in evidence also.

Q. (Exhibiting photograph marked "G 5.") Examine that and state what it is.

A. That is a monument that is upon the rise of the slope, where the west centre monument of the Guebabi is. This is the one that Mr. Bonillas says he uses as one of his triangulation points.

By Mr. HENRY: We offer it in evidence.

Q. (Exhibit another photograph, also marked "H 5.")

A. This is a monument of that west centre of the Guebabi, looking towards the east, with the Benedict mountain and the Patagonia range of mountains in the distance.

By Mr. HENRY: This photograph is offered also.

246 Q. Now this one (exhibiting photograph marked "X").

A. That is a clump of large cottonwood trees that stand down the river and adjoin the field, the Guebabi farming place.

By Mr. HENEY: That is also offered in evidence.

Q. (Exhibiting photograph marked "V.") State what that is.

A. This is a picture, same as the other two—the picture of the dry mesquite trees west of the Tumacacori church.

Mr. HENEY: That is also offered in evidence.

Q. (Exhibiting photograph marked "A 5.")

A. That is the south centre monument of the Guebabi grant. You can see the stake there in that—the one that has the cuttings of the United States surveyor.

By Mr. HENEY: We offer it in evidence.

Q. (Exhibiting photograph marked "B 5.")

A. That is the same one, taken from a different direction.

Mr. HENEY: We offer that also.

Q. Examine that (exhibiting photograph marked "C 5.")

A. That is another photograph of the same monument, taken from some other direction.

By Mr. HENEY: We offer that in evidence.

Q. (Exhibiting photograph marked "Z.") State what that is.

A. That is the monument on the slope of the hill at the vado seco.

By Mr. HENEY: That is also offered.

247 Q. (Exhibiting photograph marked "Y.") And this?

A. That is the vado seco crossing, where the wagon road goes across the river bed.

Mr. HENEY: We offer that in evidence.

Q. Now examine this one (exhibiting photograph marked "T").

A. That is the west centre monument of the Tumacacori grant. I don't know what that mountain is in the background. Perhaps it is the Tumacacori mountain.

Mr. HENEY: We offer it in evidence.

Q. Now this one (exhibiting photograph marked "I 5").

A. That is the monument at the upper end of the Cienega Grande, and shows the San Cayetano and the Santa Rito mountains in the distance.

By Mr. HENEY: We offer this photograph in evidence.

Q. (Exhibiting photograph marked "J 5.") What is this?

A. That is the monument up above the Cienega Grande.

By Mr. HENEY: We offer it in evidence.

Q. (Exhibiting photograph marked "S.")

— This is the monument that is in the mesquital, or mesquite grove; the east centre monument of the Tumacacori.

Mr. HENEY: We offer that.

Q. (Exhibiting photograph marked "F 5.") State what that is.

A. This is where you stand at the east centre of the Guebabi and look down that falling mesa or sloping mesa and the gulch off toward the Guebabi.

248 By Mr. HENEY: This photograph is also offered in evidence.

Q. Look at this photograph, marked "Q" on its face, and state what it is.

A. That is the inside of the burying ground that is built in the rear of the Tumacacori church.

Q. What does it show particularly?

A. This part of it is the walls of the church (indicating).

Q. What is this around here that appears to be a wall?

A. It is made out of adobe and covered with a kind of white plaster—cement.

Q. About how high is it?

A. Think it is higher than my head.

Mr. HENEY: This photograph also offered in evidence.

Q. (Exhibiting photograph marked "R.") State what this is.

A. This is a picture of the Tumacacori church and shows the little chapel behind it—that little round thing of which the roof as fallen in.

Q. Where is that chapel?

A. That stands in the centre of the burying ground as regard side to side.

By Mr. HENEY: That is also offered.

Q. (Exhibiting another photograph.) This is marked "C." State what it is.

A. This is a photograph of the same Tumacacori Mission church, looking north. You see the houses off towards the right of the picture here. I guess they are dwelling-houses, but there is nothing but the adobe walls remaining with the windows and doors.

249 By Mr. HENEY: This photograph is also offered in evidence.

Q. (Exhibiting photograph marked "D.") What is this?

A. That is the Tumacacori church—a picture showing the front of it and the side next to the public highway—the west side of it.

By Mr. HENEY: We offer it in evidence.

Q. Now, this one (exhibiting an unmarked photograph).

A. This is the east centre monument of the Tumacacori.

Mr. HENEY: We offer it in evidence.

Said photograph was thereupon marked "I I."

Cross-examination.

By Mr. REYNOLDS:

Q. You have been familiar with this country since 1883, you say?

A. Yes, sir.

Q. What have you been doing in that country?

A. What my business is?

Q. Yes, sir.

A. Cattle-rancher.

Q. You were down there in charge of land grants?

A. You mean living on one?

Q. Yes, sir.

A. In charge of it; yes, sir.

Q. You have been a very large owner and claimant of these grants?

A. Yes, sir.

Q. More than one?

250 A. No, sir; I have just got an interest in the San Rafael.

Q. Are you on charge of the Sonoita?

A. Yes, sir.

Q. Any other?

A. Now; at the present time?

Q. Yes, sir.

A. No, sir.

Q. You have been very much interested and undertaken to get title and assert ownership over land grants in this section of country since 1883, and have been very active at it?

A. Only as much as I believed them to be honest and valid.

Q. I am not questioning that, Mr. Cameron, but I ask for the fact whether you have not been very active and asserting claims to land grants down there generally and hunting for monuments.

A. No; not any more than hunting for monuments with the title papers of the grants.

Q. Well, haven't you been very active in undertaking to locate monuments as boundaries to land grants in that section of the country and taken an active interest not only in your own but others?

A. Locating land grants according to the monuments?

Q. Exactly; hunting monuments that mark the location of land grants.

A. Yes, sir.

Q. Did you ever pile any stones together yourself since you have been there?

A. Never at any place where it was called for as a monument and there was none there.

Q. I am not asking you that, but I am asking whether or not you have ever piled up or caused stones to be piled up in the shape of those monuments, as a general rule, anywhere in that country at all, whether marking the corner of a land grant or not.

A. Well, I can't answer that yes or no.

Q. You can't?

A. No.

251 Q. Why?

A. Because it won't admit of that kind of an answer.

By Mr. HENRY: Answer it any way you please.

By the WITNESS: The only place I ever piled up any monument has been at the place where the calls of the expediente didn't say there was a monument and we wanted to put one there to mark the place that we had taken as that particular point, according to the calls of the expediente, in connection with the natural landmarks.

Q. You have piled up stones, then, which would answer for monuments where you didn't find one at the place you supposed the monument ought to be, according to the calls of the grant?

A. Yes, sir; and in no other place.

Q. Did you ever pile up any stones in the same way anywhere else?

A. No, sir.

Q. No other place?

A. No, sir.

Q. Did you ever see any stones piled up in that way which you understood did not mark the boundaries of a land grant?

A. You refer to mineral monuments in our country?

Q. I am talking about piles of stones similar to those piles of stones which you call monuments. I don't know whether they are monuments or what they are, but they are piles of stones. Now, have you ever seen any others that you don't know to be monuments of land grants?

A. You refer to those monuments along the edge of the Tuma-cacori?

Q. I am not referring to any monuments, to any particular ones, but I ask you generally if you have ever seen any piles of stones similar in appearance to those you designate as monuments to land grants anywhere in that country.

A. Never did.

252 Q. Do you know what a wick-i-up is of the Indians?

A. Made out of brush, you mean?

Q. I am asking you; what the Indians call a wick-i-up—a pile of stones.

A. No; I never heard of it at all that way. A wick-i-up is their house that they live in, made of brush, as I understand it.

Q. Did you see any monuments along the edge of the Santa Cruz valley, any piles of stones that looked like those monuments?

A. None there; no, sir.

Q. Then Mr. Bonillas was mistaken when he said he took a lot of those (interrupted)——

A. No, sir; they are all there, every one of those.

Q. Any other along the edge of the valley of the Santa Cruz?

A. No, sir; I was applying it to the San Rafael grant when I said that. They call that the Santa Cruz valley there.

Q. You identified this pile of stones on photograph "J 5" as

the monument that stands above the Cienega Grande. Who put those letters on that rock?

A. I believe Mr. Bonillas put them on; I wouldn't be sure, but I think he did.

Q. You knew where that monument was before you went there with Mr. Bonillas, didn't you?

A. Yes, sir.

Q. You had been there before?

A. Yes, sir.

Q. Mr. Bonillas didn't take you to it?

A. Yes, sir.

Q. You told him where it was before you went there?

A. He took me to show the place.

Q. Didn't you know where every one of those monuments were, and had not you located them long before Mr. Bonillas ever went out there?

A. That is what I said.

253 Q. Every one of them?

A. Yes, sir.

Q. And Mr. Bonillas' location corresponded to your location?

A. In some places. He took at Calabasas a little different point than I had.

Q. How far different?

A. Well, practically the same.

Q. As a matter of fact, you had located those monuments long before Mr. Bonillas ever surveyed the grant?

A. Yes; and any person taking the expediente and going there will do the same thing. It is utterly impossible to mistake the location.

Q. Do you think that pile of stones has remained there in that shape in the condition that it is now in for eighty-seven years?

A. No; I told you that these stones on top would show that they were picked up from around the bottom, but not disturbing the monument itself, and piled up on top of it.

Q. How much of that pile has been reconstructed?

A. I can show you (referring to photograph). Just this portion of it right there. All the rest of this is old monument and the stones will show they were buried. If you will go there you will see yourself that it is a very old monument. An examination of this on the ground will convince anybody.

Mr. HENRY: Just mark that part on the photograph that you say is the old part.

A. (Witness did as requested.)

Q. Did you ever see any other piles of stones in that country as high as this was before it was rebuilt? I am speaking of that part which is not reconstructed and which you say is the old monument.

A. You mean any other monuments of the grant or any other similar to that?

Q. Yes, sir.

A. Yes, sir.

254 Q. All been rebuilt?

A. No, sir; some of them never been touched.

Q. Piled up recently?

A. No, sir. The reason I did that was that it was in sight of the public road and I wanted to raise it so it could be seen. I piled those stones on top. I did it myself.

Q. (Exhibiting photograph "I 5.") Now, looking towards the north, I notice in the distance the outlines of two peaks; which one is the San Cayetano, the one to the right or left?

A. This (indicating). It looks to be the biggest mountain here, but in fact it is not.

Q. The other is furthest away?

A. Yes, sir; it is a little furtherest away, but that is not the reason; it is because of the direction that it was taken.

Q. The point of view from which you look at it?

A. Yes, sir.

Q. The one to the left, then, is the San Cayetano?

A. Yes, sir; the one to the left. It looks as though it is the larger mountain there, but it is not.

Q. (Exhibiting photograph "T.") Look at that pile of stones and state if it is in the exact condition it was when you first saw it.

A. No; because some one has put a pole in there, and to do that they would have to move some of the stones.

Q. I have reference particularly to the stones; I don't mean the pole.

A. He may have moved those stones a little; of course he had to necessarily to get his pole down into it.

Q. Is it substantially as it was when you first saw it?

A. Yes, sir; it is just about the same kind of monument.

Q. When did you first see it?

A. In 1890, I believe.

Q. Who took you to it?

A. I guess I took myself to it; I had the expediente, and with the expediente in my hand I found it.

Q. Have you ever seen any other piles of stone in that country that look like that that wasn't corners to grants and hadn't
255 been recently made?

A. The northwest monument is similar to it, and the little piles of stones that marked along down the valley on the projecting mesas out into the valley there are old monuments like that.

Q. (Exhibiting photograph "H 5.") This is a photograph of the west centre monument of the estancia grant; have you ever seen anything like that in that country that would answer for a monument of a land grant just as well as anything else?

A. If you mean by this to say there are no other monuments in the country.

Q. I mean piles of stones.

A. There are no other piles of stones in the country that will answer the calls of the expediente that look anything like this at all.

Q. Yes; I understand that, but I ask you if around over the face

of the country there you do not find other piles of stones something like that which you do not know whether they were placed there to mark the monuments of land grants or not.

A. I have never looked for them.

Q. Haven't you come across them, then, without looking for them?

A. I saw the monument of the Nogales land grant a long time before I knew what it was, and the Sonoita; I saw them, but didn't know what they were.

Q. I ask you not about monuments that you know or don't know are claimed to be monuments of any land grant, but whether you have not seen piles of stones in your travels over that country that looked like that.

A. I may have seen them, but never had my attention called to them. I have ridden by one of the Sonoita many times, but didn't recognize it.

Q. You are familiar with the general contour of the country and have gone over it backwards and forwards after cattle?

A. Yes, sir.

256 Q. And have seen permiscuous piles of stones over that country that were not or were marked for land grants; haven't you seen them?

A. Yes, sir; I have seen the Sonoita a long time before I knew what it was.

Q. (Exhibiting photograph marked "S.") Here is a photograph of the east centre monument of the Tumacacori. Look at that pile of stones.

A. Yes, sir.

Q. In your travels over that country haven't you seen piles of stones quite as high as that and something similar that you didn't know whether they were monuments or not?

A. That is the only pile of stones I ever saw like that and the only one I ever saw called for in a mesquite grove like that, and never went anywhere else to look for it.

Q. Outside of that hav'n't you seen on the prairie or anywhere else independent of mesquite groves and independent of boundaries of land grants; hav'n't you seen piles of stones looking like that in different places?

A. I have no recollection of seeing anything of the kind.

Q. You would not say they are not there?

A. No, sir; perhaps I could find them if I should go out for that business.

Q. You have hunted for monuments pretty carefully, hav'n't you?

A. Yes, sir; as far as these land grants are concerned, according to the calls of the expediente—that is, as far as I have looked for them.

Q. You found piles of stones (interrupted)——

A. No, sir; excuse me; I look for the location as called for by the natural objects.

Q. Well, that is what I say; you went out to locate your land

grant, and if you could find a pile of stones anywhere in the neighborhood of what you thought ought to be the place according
257 ing according to the calls on the ground you took that to be the monument of the grant?

A. No, sir; nothing of the kind.

Q. You didn't?

A. If I found the calls of the locality of the country that answered the calls of the expediente and there wasn't any monument within a hundred miles of it I took that for the particular point, and would take it in every case.

Q. Independent of whether there was a monument there or not?

A. I don't know that a monument has anything to do with it.

Q. But if you found a monument you were absolutely certain?

A. Yes, sir; that the place they selected was the same place that I took—the very identical spot. If there was no monument there I might have got a hundred yards one way or another.

Q. If you found such a pile of stones you concluded it was a monument erected at the time?

A. Yes, sir; at the Mesquital grove I took that to be the identical place. It is some distance in extent. If I hadn't found any pile of stones I would have been just as certain that was the place. It only showed me the identical spot was the spot they took.

Q. These monuments are loose piles of stones, easily torn down as a rule, and might be carried away or destroyed very easily?

A. Yes, sir.

Q. And might be built very easily?

A. Yes, sir.

Q. Now, photograph "D 5," which is designated as the east centre monument of the estancia grant, what direction, now, looking toward the photograph, is the Sonoita river or the Sonoita cañon?

A. Well, when you are standing up this way and looking at it, it is right back here (indicating).

Q. Behind you?

A. Yes, sir.

258 Q. Or to your left side?

A. Well, the river is very crooked.

Q. I know; but as you look perpendicularly towards the photograph?

A. Here (indicating) is the Patagonia mountains, and the Sonoita run through there in a west direction.

Q. Now, as you look towards the photograph just beyond your monument you see a lot of timber and a depression as if a valley. Is not that the valley of the Sonoita?

A. No, sir; it is not.

Q. It is not?

A. No, sir.

Q. What is it and how much lower is it than the place where your monument is?

A. It is about three or four hundred feet.

Q. Pretty precipitous down to it?

A. Yes, sir; after you get on top of this hill here.

Q. You speak of this hill shown in Exhibit "E 5" now?

A. Yes, sir; this is the big, fat hill or the little, fat mountain that is about five hundred feet above this, standing by itself, and on this left side down the Sonoita, the top of it, I should say it is one thousand feet, maybe nine hundred.

Q. Now, taking photograph "D 5," this hill sloping from the pile of stones or monument to the left on the photograph, is that the point of this hill which is photographed in "E 5"?

A. Yes, sir.

Q. Do you know why on these photographs and why on this map the term Cerro San Cayetano is given to this particular point?

A. Why on there?

Q. Yes, sir; and on the map—the term Cerro San Cayetano is given to that particular point.

A. I suppose it is given to that particular point because there is where the measurement of that east line ended on that hill,
259 and they say in the title papers they put up a monument at the end of the measurement, and they put it up at the foot of Cerro San Cayetano. At this time they must have called that the Cerro San Cayetano.

Q. You never knew anybody in that country to call that the Cerro San Cayetano, did you?

A. I don't know as I did.

Q. And the first time it ever got that name was when this survey was made?

A. No, sir.

Q. Did you give it to it?

A. The first time that I read the title papers and discovered where the east monument was it was patent that that was the name of that hill, and that it was known to the people who made that survey by that name.

Q. The Cerro San Cayetano is one of the best-known land marks in that country, isn't it?

A. Just like the Santa Rita mountains; yes, sir.

Q. The designation of a particular mountain?

A. At the present time; yes, sir.

Q. And has been ever since you have been there?

A. Yes, sir.

Q. And before you came there?

A. I don't know anything about that.

Q. Never heard anybody say so?

A. No.

Q. It is as well-known point in that country as any other now?

A. Yes, sir; I suppose has been.

Q. Now, the round, fat hill which you call the Cerro San Cayetano, can you get on top of it and go on the top of it?

A. Yes, sir.

Q. It is not so sharp that you cannot go along the top of it for some distance?

A. There is not much distance to it. It stands isolated and by itself.

Q. You could ride very comfortably over it on a horse?

260 A. Not very comfortably. I doubt if you could ride on top of it, and I know you could not ride down it. I have ridden over the mountain that you call the San Cayetano mountain.

Q. Did you explain to Mr. Bonillas the location of those points which you had located yourself a long time before? Did you discuss it with him before going out there as to where they were?

A. I will tell you what I said to him if you wish.

Q. Very well.

A. I said to him, "Mr. Bonillas, I want you to get a certified copy, and I would like you to make it yourself if they will let you do it, and I want you to make the survey according to those calls regardless of what anybody else has done."

Q. Was that all?

A. That is all I told him.

Q. Never discussed the question of monuments with him?

A. No, sir; never told him I thought it ought to be here or there or anything.

Q. Did you ever tell him what you found?

A. I may have said I had been over it; very likely I did. It was very natural I should.

Q. Of course it was. Did you tell him you had had title papers, and in going over the ground with the title papers, and so forth, you had found any monuments corresponding with the descriptions in the title papers?

A. Yes, sir; I believe I did.

Q. It was all gone over, wasn't it, between you and Mr. Bonillas before he ever made this survey?

A. I don't think I talked anything to him about that, because I wanted him to make the survey as he believed it to be and as he found it.

Q. Any general explanation to him as to the condition of the country and the reconnoitering you had given it?

261 A. I never explained anything to him at all.

Q. I speak of the result of your reconnoitering of that country.

A. I may have said to him that I had had the title papers and had gone around and been able to find what I believed to be the monuments.

Q. And if he didn't agree with you it was all right?

A. Yes, sir.

Q. It was perfectly natural you should have done so, that you should tell him the reconnoitering you had done?

A. I think so.

Q. Very strange if you didn't. I should, I know.

A. Yes; I think I did. What I was wanting from the survey was to get at the truth, not what I had found.

Q. The claim as to the boundaries of this grant, the location of those boundaries as surveyed here, are not as you gentleman have been heretofore claiming them, are they, altogether?

A. Do you mean whether the monuments or the calls of the expediente are not the same?

Q. No; the calls are the same, I guess, but its location on the earth's surface.

A. I think all except one monument; the monument at Calabasas is a little different—that is, as to which side of the gulch it was on.

Q. You say that was a slight difference?

A. Yes, sir; very slight. The rest are absolutely the same, I believe.

Q. Now, this monument above the Cienega Grande, was that one of the monuments which you have heretofore claimed as one of the monuments of this grant?

A. Above where?

Q. About the Cienega Grande?

A. Yes, sir; that was always claimed as one of the monuments of the grant.

262 Redirect examination by Mr. HENEY:

Q. Do you know who made the map which was filed with the petitioner in this case?

A. Yes, sir; I do.

Q. Who?

A. Frank Oury.

Q. Do you know whether Frank Oury is alive or dead?

A. He is dead.

Q. Did Frank Oury in that map run the line from the Vado del Apache to the monument which is above the Cienega Grande?

A. Yes, sir.

Q. Does it run so on the map?

A. No, sir.

Q. Why didn't he place it on the map, if you know?

A. Well, because—I shall have to make you responsible for this.

Q. Put the responsibility where it belongs.

A. Mr. Oury says the line should run from the Vado del Apache to the monument above the Cienega Grande and from the monument of the Cienega Grande it should go in a southwesterly direction parallel with the line that goes from the centre to the west centre, and I said to him to run it out square. He said, "I don't like to do that. I don't think that is the way it was intended." I believe you said to him, "You make it square and I will be responsible for it," and I said, Yes; make it that way; but still he objected to it, and after he came into town I don't know whether Mr. Heney said anything more to him or not, but the next I saw it it was made this way, and not the way he intended to make it.

Q. Didn't I ask you if it wasn't customary to parallel the lines if they didn't parallel?

A. Yes, sir; you did, and he said that it was, and I said, Than parallel these lines, anyhow. Yes; that is the way it was done.

263 Q. But Mr. Oury's construction of that expediente was that the line should run how?

A. From the Vado del Apache to the monument above the Cienega Grande and the line from there westward should be a parallel line with the line running from the centre of the Guebabi to the west centre monument on the highest hill seen westerly from the potrero.

Q. How would that correspond with the map made by Mr. Bonillas?

A. It would be exactly the same.

Q. When this survey was made by Mr. Bonillas were you in Arizona?

A. No, sir.

Q. Where were you?

A. In Montana.

Q. How long before he started did you go to Montana?

— I don't know. I hadn't seen him for three or four months before he commenced the survey.

Q. Did you have any conversation with him from the time he commenced the survey until after he had completed his map?

A. I didn't see him and had no correspondence with him.

Q. Did you return to Arizona during all that time?

A. No; the work was completed, I believe, and the map made before I came home. I was gone up there half a year.

Q. Can a monument be built so that by picking up the stones and piling them on top of each other so that it would deceive even a casual observer as to its age or as to whether or not it was ancient?

A. Not at all. It is utterly impossible.

Q. Why?

A. Because you can't build a monument without exposing the new surfaces of the stone to show that it had been put up. If you tear down an old monument and put it up again, anybody will notice it.

264 Q. What caused you to take an interest in looking for the monuments of this grant? How did you come to go to the monuments of this Calabasas and Tumacacori grant in 1883 if you were not interested in it?

A. Mr. Watts, who showed me the monuments at the north end of the Tumacacori, wanted me to buy a herd of cattle. I was buying a good many cattle at that time and there was a bunch there for sale and he wanted me to buy them, and he said that Colonel Sykes was the owner of this grant and I could buy it cheap, and he was showing me the extent of the property on the river.

Q. How much money have you invested in grants in the Territory of Arizona?

A. I don't want to tell.

By Mr. HENRY: That is all.

THOMAS BAYZE, a witness called and sworn on behalf of the petitioner-, testified as follows:

Examination by Mr. HENEY:

Q. Mr. Bayze, where do you live?

A. Nogalitas, Arizona.

Q. Who are you working for and what is your business?

A. Cowman, and I work for Colin Cameron.

Q. In charge of cattle where?

A. On the Calbabsas grant.

Q. How long — you been working there?

A. About five years.

Q. Who were you working for before you worked for Colin Cameron on that ranch?

A. I. N. Town.

Q. Do you know whom he represented?

A. The Santa Rita Land and Cattle Company.

Q. Do you know where the monuments of the Tumacacori land grant are?

A. Yes, sir.

265 Q. Do you know where the old Tumacacori church is?

A. Yes, sir.

Q. Is there a devisadero north of that anywhere in the valley or close to the valley or on the side of the valley?

A. Yes, sir.

Q. Whereabouts is it?

A. About a mile and a half north of Tumacacori.

Q. On which side of the valley?

A. On the east side.

Q. Have you ever been on top of that devisadero?

A. No, sir.

Q. You have not been?

A. No, sir.

Q. Do you know where the north boundary of the Tumacacori grant is, with reference to the devisadero?

A. Yes, sir.

Q. Where?

A. It is right opposite that devisadero.

Q. Have you ever been to the northwest monument of the Tumacacori?

A. Yes, sir.

Q. Where is that?

A. That is a little northwest of Tumacacori and right opposite the devisadero.

Q. On the opposite side of the valley?

A. Yes, sir; on the opposite side of the valley.

Q. When did you first see that monument?

A. I believe it was in 1882 or 1883; some time along there.

Q. What was the appearance of that monument at that time?

A. It had the same appearance it has today.

Q. What is that appearance as to age?

A. An old appearance; very old.

Q. Do you know where the east centre monument of the Tumacacori grant is?

A. Yes, sir.

Q. Is the northwest centre monument—have you been to that in company with Mr. Bonillas since you first saw it?

A. Yes, sir.

Q. Is that the one taken by him as the northwest monument of the Tumacacori?

A. Yes, sir.

266 Q. Do you know where the east centre monument of the Tumacacori is?

A. Yes, sir.

Q. Where is that located?

A. It is about east about a mile *for* the church.

Q. In what kind of a place?

A. It is in the centre of the mesquite grove.

Q. What appearance has that monument?

A. It has the appearance of being nearly covered up by the freshets from the hills.

Q. What would you say as to its age?

A. I would call it a very old monument.

Q. Do you know where the west centre monument of the Tumacacori is?

A. Yes, sir.

Q. Where is that?

A. That is about one hundred yards west of the Tumacacori church, on the point of a mesa.

Q. When did you first see that?

A. I couldn't say exactly when I first did see it, but I believe it was the same time I saw the other one, along in 1882 or 1883.

Q. Did Mr. Cameron tell you where it was before you saw it?

A. No, sir.

Q. Who did tell you it was there?

A. I don't know who did tell me before I saw it. The first time I remember seeing it there was a time when we were gathering cattle there in the fall of 1882 or 1883.

Q. Who were you working for then?

A. Maish and Driscoll.

Q. Where were their cattle running with reference to the Calabasas ranch?

A. North of there.

Q. What was the appearance of that west centre monument as to age when you first saw it?

267 A. I wasn't right to it the first time I saw it and couldn't say what the appearance of it was. I only saw it at a distance.

Q. Have you been close to it since?

A. Yes, sir.

Q. And what is its appearance as to age?

A. Its appearance is a very old monument.

Q. Do you know where the ruins of Old Calabasas are ?

A. Yes, sir.

Q. Where are they with reference to this valley of Tumacacori ?

A. They are on the southern boundary of the valley.

Q. Do you mean the valley pinches out there ?

A. Yes, sir.

Q. What, if anything, is there that is mentioned in the title papers in the vicinity of Old Calabasas ?

A. There is the mouth of the Potrero creek ; also a cañon comes in from the west just above the old ruins.

Q. How far above the old ruins ?

A. About a hundred yards.

Q. How well known are these ruins ?

A. The first time I noticed it was in 1884.

Q. Is it generally known by that name ?

A. Yes, sir.

Q. Do you know where Guebabi is ?

A. Yes, sir.

Q. The mission ?

A. Yes, sir.

Q. The old ruins ?

A. Yes, sir.

Q. And from there do you know where the meadow of Guababi is ?

A. Yes, sir.

Q. In what direction is it from it ?

A. It is north and about a distance of a mile.

Q. How long have you known the ruins of Guebabi ?

A. I believe the first time I saw them was in 1890.

Q. Do you know where the trail is that runs from Tubac to Santa Cruz ?

A. Yes, sir.

Q. How close does that trail run to those ruins, or does it run anywhere near them ?

A. It passes within about a hundred and fifty yards of the ruins.

Q. What is the character of the river bed and the formation of the river banks in the immediate vicinity of the Guebabi ruins ?

A. It is rocky and very narrow.

Q. How high ?

A. From the bluffs there on the east side twenty or thirty feet high.

Q. Is there any meadow at that place ?

A. No, sir ; the mountain comes right into the river on the west side.

Q. Do you know where the cottonwood trees are that were taken by Mr. Bonillas as a starting point or the centre of the Guebabi ?

A. Yes, sir.

Q. Where are they with reference to this meadow ?

A. They are, I should judge, about the centre of the meadow.

Q. Have you ever been to the east centre monument of the Guebabi grant?

A. Yes, sir.

Q. Describe where that monument is located.

A. It is located in an easterly direction from the Guebabi, still on the waters of the Santa Cruz river, but right where they divide from the Santa Cruz to the Sonoita, right on the ridge—the dividing ridge—at the foot of the small mountain that rises out of the valley of the Sonoita.

Q. About how high would you call that mountain coming up onto it from the valley of the Sonoita, from the bottom?

A. I would call it about a thousand feet.

Q. What is in front of it towards the Guebabi?

A. In front of it?

Q. Yes, sir; what kind of land?

A. It is a mesa.

269 Q. How high does the top of it rise above that mesa?

— I should judge two or three hundred feet.

Q. Can you see that hill from the vicinity of the Guebabi meadow?

A. Yes, sir.

Q. And in going down from where this monument is towards Guebabi on what kind of land do you travel; what is the description of that land?

A. I can take and by using a little winding course—not going straight—and follow a mesa all the way to Guebabi.

Q. And that mesa is of what character, as to its being level?

A. It rises in places and gradually slopes down to the river.

Q. And how is its width compared with its length?

A. It is very narrow and very long. I don't think the widest place of it is over five hundred yards, and it is about four or five miles to the river—four or five miles long.

Q. When did you first see that east centre monument?

A. The first time I ever saw the east centre monument was along about the middle of this month.

Q. What appearance has it as to age?

A. Very old appearance.

Q. Was that monument pointed out to you by Mr. Bouillas?

A. Yes, sir.

Q. Were you on top of this small mountain or high hill just in front of that monument?

A. Yes, sir.

Q. From there what sort of a view do you get of the lands embraced within the Guebabi grant?

A. You get a very good view of the whole country.

Q. And of the Tumacacori grant?

A. Of the Tumacacori you don't get hardly any view of it.

270 Q. Can you see any of the other monuments or the places where monuments are of that grant?

A. Yes, sir.

Q. Which ones?

A. I could see the south centre monument—that is the place where it is, and with the glass you can see it, I am satisfied—and you can see the west centre monument.

Q. The monument itself?

A. You can see it with a glass. You can see exactly where it is, but you cannot distinguish it with your naked eye.

Q. Have you ever been to the south centre monument?

A. Yes, sir.

Q. When did you first see that?

A. I saw that in 1890, I believe.

Q. What appearance did that have when you first saw it?

A. A very old appearance.

Q. Was there anything on it or about it that attracted your attention?

A. Yes, sir; there was a stake in it marked as surveyors generally marked stakes in marking land corners $1\frac{1}{2}$ this country.

Q. What is that place known as?

A. It is known as the Vado del Apache.

Q. How long have you known it by that name?

A. Ever since I knew the place there—country; that was in 1890 first.

Q. Who told you that was the name of the place?

A. It is generally known over all the country by everybody in that country.

Q. Do you know the place called Vado Seco?

A. Yes, sir.

Q. Where is that from the Vado del Apache?

A. It is about two miles north.

Q. And what kind of a place is that?

A. It is a crossing of the river, a dry ford.

Q. How much of the year is it dry?

A. It is dry all the year except when there is a freshet in the river from the rainy season.

271 Q. Do you know any monument in the vicinity of that vado seco?

A. Yes, sir.

Q. Where is that?

A. It is north about a half a mile from the edge of the valley and east of the old Santa Cruz trail, right on the side of it.

Q. How close to it?

A. About a hundred feet.

Q. When did you first see that monument?

A. The first time my attention was ever called to it, I believe, was in 1893.

Q. What appearance did it have as to age?

A. It had a very old appearance.

Q. And what appearance has it now?

A. It is the same.

Q. Do you know the Yerba duena?

A. Yes, sir.

Q. Where is it from the vado seco?

A. South.

Q. Between there and the Vado del Apache?

A. Yes, sir.

Q. How long have you known that place as the Yerba Buena?

A. Since 1890.

Q. Who told you that was called the Yerba Buena?

A. Everybody in the country calls it that. I couldn't say *you* first told me.

Q. Do you know where the Cienega Grande of the Potrero is?

A. Yes, sir.

Q. Where is that?

A. That is a little south of west of Guebabi about three miles.

Q. Do you know the place called the Pete Kitchen ranch?

A. Yes, sir.

Q. Where is that from the Pete Kitchen ranch?

A. South about two miles.

Q. How long have you known that place called the Cienega Grande of the Potrero?

A. The first time I saw it was in 1883.

Q. Who have you heard call it the Cienega Grande of the Potrero?

272 A. It is a well-known name all over the country. Everybody knows it by the Cienega Grande.

Q. Do you know a monument in this vicinity?

A. Yes, sir.

Q. And what is the character of that monument?

A. It is a very old monument.

Q. Is that the monument taken by Mr. Bonillas?

A. Yes, sir.

Q. And this monument that you speak of at the vado seco was pointed out to you by him, and is the same one you speak of?

A. We was never on the ground, I don't think, right at it, but in speaking of it he described that one as the monument.

Q. One at the vado seco?

A. Yes, sir.

Q. Did he point that one out?

A. I don't remember that he ever pointed it out or not, but in speaking of it he described it to me.

Q. Did not you and myself and Mr. Faxon and Mr. Cameron go to that monument?

A. I believe we did, now that you speak of it.

Q. And did not Mr. Bonillas then point it out to you?

A. Yes, sir.

Q. That is the monument you had known before?

A. Yes, sir.

Q. The monument at the Cienega Grande of the Potrero—what appearance of age has that?

A. It is a very old monument.

Q. Did it have any appearance of age when you saw it?

A. Yes, sir.

Q. Have you ever been to the west centre monument of the Guebabi claim?

A. Yes, sir.

Q. When did you first see that monument?

A. I couldn't say when was the first time. It was in the year 1890 when I first saw it.

Q. Did Mr. Bonillas ever point that monument out to you?

A. Yes, sir.

Q. As the one taken by him for the west centre monument?

A. Yes, sir.

Q. When you first saw it what appearance did it have of age?

A. When I first saw it it had the same appearance as
273 now—a very old monument.

Q. Where is that monument located?

A. Where is it?

Q. Yes, sir; how would you describe the place?

A. It is west of the old Potrero ranch about four or five miles on the highest ridge looking toward the Pajarita mountains, on the side of that hill.

Q. When you first went to work on that ranch for Mr. Town where were you living—where did you make your headquarters on the ranch?

A. Right in the Cienega Grande; the house that is on the point of land that is in the Cienega Grande.

Q. How long did you live there?

A. About three months.

Q. And where did you live the balance of the time?

A. Moved from there to the Potrero ranch and stayed there about a month and then I moved to Nogalitas and have been living there ever since.

Q. Did you live within the limits of the grant all the time?

A. No, sir.

Q. You say you have been living at Nogales lately?

A. No, sir; at Nogalitas; that is outside of the limits of the grant.

Q. Where were the cattle running?

A. The cattle are running on the grant.

Q. Do you still retain possession of the Potrero ranch?

A. Yes, sir.

Q. Have you any of the lands fenced anywhere on the grant?

A. Yes, sir; considerable.

Q. Have you had any trouble about maintaining any of the fences?

A. Considerable trouble.

Q. In whose possession is the best land in the valley—the most of it?

A. In the squatters' possession.

Q. And was it in your possession when you went there?

A. No, sir.

Q. What trouble have you had with them about your fences?

A. I would erect and they would come and cut them down.

274 By Mr. REYNOLDS: I have no objection as to the fact of settlers having gone in there, but I object to the question of cutting fences, and move to strike that out.

By the COURT: Yes; omit that.

Cross-examination by Mr. REYNOLDS:

Q. Mr. Bayze, were all those monuments that you saw alike?

A. Well, in general character, yes, but not exactly.

Q. Were they all about the same age?

A. About the same age, I should judge they were.

Q. And the same condition of preservation, about?

A. Yes, sir.

Q. None of them looked like they had been rebuilt?

A. Not when I first saw them; no, sir.

Q. Do they look like they had been rebuilt now?

A. Some of them.

Q. How many of them?

A. Not rebuilt, either; there is some rocks put on them to sustain flag-posts.

Q. Rebuilt a third of their height?

A. One has been rebuilt a third of the height.

Q. And others the stones are arranged and put together in more uniform order?

A. Yes, sir.

Q. Are there as many as four or five of them where the stones are not arranged in more uniform order?

A. About three, I think.

Q. What three are those?

A. One is the one above the Guebabi ruins, between there and the vado seco, and another one is the northwest monument opposite the devisadero, and there is another one up above the Cienega Grande that has been re-arranged.

Q. Yes; now, is there a monument between the vado seco and the ruins of Guebabi?

A. Yes, sir.

Q. There is a monument there?

A. Yes, sir.

Q. Is that claimed to be one of the monuments of the grant?

A. Yes, sir.

275 Q. Are there is one at the vado seco?

A. That is the same one.

Q. Now, do you know anything about a road that goes to Crittenden that passes very close to that east centre monument?

A. No, sir.

Q. You don't?

A. No, sir; not that passes any way close to it.

Q. Well, within three or four hundred yards.

A. No, sir; there is not any.

Q. I am speaking of a government wagon road or trail going to Crittenden coming from the west. I will explain it to you. Do

you know the road that runs up the cañon from Guebabi towards the east centre monument?

A. Yes, sir.

Q. Where does that road go to, if you know?

A. It goes to Crittenden.

Q. Does it pass around the foot or bottom of this Cerro San Cayetano?

A. No, sir; nowhere near it.

Q. After it passes, the mountain drops down into the valley, where there are some cultivated lands, don't it?

A. The road?

Q. Yes, sir.

A. No, sir; where it goes into the valley there are no cultivated lands at all.

Q. Are there any cultivated lands in the valley now?

A. In the Sonoita valley? What valley are you speaking of?

Q. Yes, sir.

A. Yes, sir; there are some cultivated lands there.

Q. Don't the Sonoita creek make a turn towards the south near Sanford's Station and come down there?

A. Turn towards the south?

Q. Yes, sir; towards the south, near Sanford's Station.

A. No, sir.

Q. When does it turn toward the south?

A. It doesn't turn towards the south at all.

Q. Keeps right on east and west?

A. The first start of it runs a little west of south and gradually curves until it runs due west till it strikes the Santa Cruz river, and pretty close to the Santa Cruz river turns a little more south again.

Q. Can you see the road from that east centre monument?

A. No, sir.

Redirect examination by Mr. HENEY:

Q. These three monuments that you state have been rearranged, to what extent have they been rearranged?

A. The bases has not been changed any; merely the loose rocks lying around laid upon it.

Q. Is there any difficulty in distinguishing between the old and the new part?

A. None whatever.

Q. Why?

A. Because the old part was never molested in any way.

Q. How can you tell the new part?

A. By the character of the rock.

Q. What is on the rocks that shows it, if anything?

A. Weather-marks.

Recross-examination by Mr. REYNOLDS:

Q. Can you tell the difference in rocks exposed to the elements for ten years, piled up where the elements could get at them—can

you tell whether one has been piled up ten years or twenty or thirty years or for only five years where it has been exposed to the action of the elements?

A. Not after five years; I don't suppose I could.

Q. Could you tell at five years?

A. I don't know as I could.

Q. Do you have any dust down in that country?

A. Sometimes.

Q. Do you have any sandstorms or whirlwinds?

A. Very few sandstorms.

Q. But you have had sandstorms there?

A. Never since I have been there.

277 Q. Rains?

A. Heavy rains; yes, sir.

Q. Snow?

A. Yes, sir; some snow.

Q. Well, take a pile of stones and pile it up like some of those are, pretty high, and have it exposed to the elements five years. Can you tell whether it has been there five years or twenty-five years?

A. I couldn't tell anything about how long it had been there.

Q. You could tell by the action of the elements that it wasn't new stones taken right out of the earth?

A. Yes, sir.

Q. What kind of stones are those, sandstones?

A. No, sir; they are granate, principally.

Q. Limestone and granate?

A. There is no lime in that country.

Q. Is there any limestones there?

A. I don't know what you would call limestones unless it is lime.

Q. You say it is granate?

A. It is what I would call granate and porphyry.

Q. Any lava there?

A. I believe you might call it lava; I don't know what the different names of rocks are.

Q. Is it not all dark-colored rock?

A. Most of it; yes, sir; but not all.

Q. No; but most of it is dark-colored rock, to begin with?

A. Yes, sir.

BARTOLOMEO ROCHIN, recalled on behalf of the petitioner-, testified through the medium of the official interpreter of the Spanish language as follows:

Direct examination by Mr. HENNEY:

278 Q. Mr. Rochin, did you find in the archives any report made by Mr. Tapia or anybody else upon the Calabasas and Tumacaori or Guebabi land claim?

A. I did not.

Q. Did you bring with you all of the correspondence, aside from

the photographic copies, which you found relating to that subject?

A. I only brought the documents that I presented there.

Q. Relating to this subject?

A. Yes, sir.

Q. And that was all the correspondence upon that subject that was in the office?

A. That was on the only one.

By Mr. HENEY: That is all.

By Mr. REYNOLDS: We have no cross-examination.

By Mr. HENEY: I would like the record to show that the deed from Aguilar to Gandara of 1856 came from the surveyor general's office; that the deed from Andrade, with power of attorney to Sykes and Curry, was deposited in the surveyor general's office also by Sykes and Curry in 1879 and came from the possession of the surveyor general.

By Mr. REYNOLDS: Very well.

By Mr. HENEY: We will offer the petition filed by Manuel Maria Gandara and also that filed by Sykes and Curry in the surveyor general's office.

By Mr. REYNOLDS: For what purpose?

By Mr. HENEY: Merely that they filed them and for whatever purpose they may be good for, showing that they made their claim at that time. You will admit the signatures of Sykes and Curry and those who came after them?

By Mr. REYNOLDS: Yes; we admit that.

279 By Mr. FRANKLIN: I represent the heirs of Francisco Alejandro Aguilar and their grantees. We will offer in evidence, may it please the court, a deed from Luisa G. de Bustamente and others to Santiago Ainsa, dated May 21, 1887. I do not recall all of the names, but they are in the deed, of course, and can be identified.

Said deed was thereupon marked "Exhibit III."

Next is a deed from Francisco Gandara, Miguel Gandara, Trinidad Aguilar, and others to Santiago Ainsa, dated April 16, 1887. I will state that the deeds convey only a portion of the interest then held by the grantors.

Said deed was thereupon marked Exhibit "IV."

Next is a deed dated April 14, 1887, from Victor Aguila, Fernando Aguilar, and others to Santiago Ainsa.

Said deed was thereupon marked Exhibit "V."

Next I offer a deed from Dolores G. de Astiasaran to Santiago Ainsa, dated May 21, 1887.

Said deed was thereupon marked Exhibit "VI."

Next I offer a deed from Santiago Ainsa to Frank Ely, trustee, dated June 22, 1887.

Said deed was thereupon marked Exhibit "VII."

There was an appointment of Santiago Ainsa as administrator, with will annexed, of Frank Ely, deceased. I do not see it here, but there is no question about his appointment.

By the COURT: You may produce it, sir, at any time.

By Mr. FRANKLIN: There is also a family tree of Francisco Alejandro Aguilar. He is dead and left no issue. He was married.

280 He left brothers and sisters. The family tree is here. I entered into a verbal stipulation with the gentlemen on the other side that for the purposes of this case it is a correct statement of the relatives and descendants of Francisco Alejandro Aguilar and of his father, Victor Aguilar.

Mr. HENEY: We agree to that on the part of Mr. Faxon, trustee.

By Mr. REYNOLDS: The Government assents to that.

Said document was thereupon marked Exhibit "VIII."

By Mr. FRANKLIN: That is all.

CARLOS VELASCO, being recalled on behalf of the petitioner, testified through the medium of the official Spanish interpreter as follows:

Direct examination by Mr. HENEY:

Q. Do you know Guillermo Andrade?

A. Yes, sir.

Q. Have you ever seen his signature?

A. Many times.

Q. Have you any letters from him bearing his signature?

A. I have some written recently (producing several letters from his pocket).

By Mr. REYNOLDS: We admit its genuineness, Mr. Heney.

By Mr. HENEY: This deed is dated July 24, 1877, on behalf of Manuel Gandara and Miguel Gandara, is admitted to be the genuine signature of Guillermo Andrade, and the deed is now offered in evidence again.

Said document was thereupon marked Exhibit "IX."

Q. Do you know the signature of Manuel Maria Gandara?

A. I do not.

281 Q. Do you know the history of the mission of Tumacacori, as to when it was established?

A. I have read something about it, and according to my reading it is in the year 1754.

Q. Have you the book with you in which you read it?

A. I hav'n't it here; it is in the office of the gentleman (indicating Mr. Reynolds). The book that I have read is a book that has been recently published, and not being satisfied from that I informed myself from the archbishop, who is also writing the history.

Q. What archbishop?

A. Salpointe.

Q. And what is the date, you say, of the foundation of the mission of Tumacacori?

A. 1754 is the date given to me by the archbishop.

Q. What book was it that you saw in Mr. Reynolds' office?

A. It is "Sonora Historico y Descriptivo;" but I wasn't satisfied with the book, and yesterday afternoon I *approved* the archbishop

and asked him for some information, and this is the letter from the archbishop to me (producing letter).

By Mr. HENEY: If the court please, this says it was established in 1754, and Mr. Reynolds says he is willing to take that date to be correct. It is not very material.

Q. When was it abandoned, if you know?

A. I am not certain about the date, but by the general law of expulsion against Spaniards in the year 1827, which did not exempt priests, they were expelled and the missions here were occupied by the Franciscan priests, and afterwards another decree was issued re-enforcing the first law.

Q. In what year was that?

A. In 1829. These decrees are here in this book (producing book).

Q. What month of 1827 was that?

A. December 20th, 1827.

Q. And what is the month of the one in 1829?

282 A. I forget, but that law is in "Las Legislacion de Mexicano," vol. 2, page 98. I refer to the law of 1827. That for the year 1829 I did not bring with me, but it was repeated in 1829.

Q. What was the next law on the subject?

A. September of 1830 a circular from the secretary's office of foreign relations recommending the governors of the States and Territories to enforce the laws. That law is in the same volume, 2, for "Las Legislacion de Mexicano," page 287. March 24, 1831, there was another circular issued re-enforcing the law, found in the same vol. 2, page 317. January 16, 1833, new provisions were made making some exceptions with regard to persons married to Mexican women, to the widows of Mexican persons and the Spaniards naturalized with friendly countries, and those who might have returned into Mexico with a passport from the government, those excused by the government and by the legislative chambers, and those who might have remained in the country on account of perpetual physical impediment. Out of those people a number of Spaniards exempted by law was 2,242. This is found in the same book, vol. 2, pages 476 and 477.

In May 5, 1833, the circular from the war department exempted the soldiers who might have fought in favor of the independence. After that other provisions of various kinds and small importance were passed.

By Mr. HENEY: That is all.

By Mr. REYNOLDS: We have no cross-examination.

By Mr. HENEY: We now offer in evidence a power of attorney from Miguel Gandara to Guillermo Andrade, dated Mazatlan, April 6, 1870, with consular certificate attached to the certificate, and it is admitted subject to any objection.

283 (Said instrument was thereupon marked Exhibit "X.")
We now offer in evidence power of attorney from Manuel

Maria Gandara, Miguel Gandara, of Guaymas, Mexico, to Guillermo Andrade, of the city and county of San Francisco, dated to Guaymas, July 1, 1876, with consular's certificate attached. The signatures of the Gandaras are admitted by the Government to be genuine.

Said instrument was thereupon marked Exhibit "XI."

COLIN CAMERON, recalled on behalf of the petitioner-, testified as follows:

Direct examination by Mr. HENEY:

Q. Do you know how long after a monument is built you are able to determine as to whether it is of great age or not, and to what extent do you know?

A. I have had occasion to notice that very carefully, and I don't know when they will show to be new, but I know for how long they do show to be new, but don't know for how many years that would continue, I mean. I know monuments that were put up in 1884, and it is just as plainly to be seen today almost that they are new monuments as it was then. You can see the marks on the stones where they were sunk in and pulled out of the ground. I don't know what you call it, but you can tell the portion that was under ground and the portion that was outside yet today.

Cross-examination by Mr. REYNOLDS:

Q. Suppose it had not been lying under ground, but has been lying in a rocky place where it hadn't sunk down in the soil?

A. I don't know as I ever saw an old monument taken down and built up again, but I believe I could tell that. If anybody had thrown down and built up an old monument again I could tell that, I believe.

284 Q. Suppose the stones were taken where there were great numbers of stones lying together and scattered around—where it was of stony—where there were plenty of them—and not sunken in the ground.

A. I never saw such a place.

Q. None down in that country, eh?

A. No, sir; they all have got a bottom to them.

Q. (Exhibiting photograph marked "T.") Ain't that a rocky place and stones all around it?

A. Yes, sir; that shows to be that place, but dirt and grass grows and good pasturage right over it; I know it well.

Q. Can't you pick up loose stones there that are not buried in the ground?

Ans. But none that don't have a bottom to them.

Q. Are there any other places around there where loose stones are scattered as they are in this photograph?

A. There are places where stones are lying—lying on tops of other stones—but they have a bottom to them, and you can tell which side has been underneath. If anybody brings the stones to you, you can tell which side has been underneath.

Q. There has been a good many monuments built in that country from which you can detect the fact that they are recent?

A. Yes, sir. Deputy United States mineral surveyors have been there every year since I have been there; one or two of them or three.

Q. Then there are a great many piles of stones which you call monuments scattered over that country?

A. Yes, sir; every mill site or dam site—whatever they call it—they put up five monuments on it in my neighborhood, all within a few feet of each other. There are some places there where I guess there are a hundred of them on ten acres.

285 YGNACIO BONILLAS recalled on behalf of the petitioner for further direct examination by Mr. Heney:

Q. Can you tell with any degree of certainty as to whether a monument is very old or not—has great age or not?

A. I think I can; yes.

Q. Can you tell how long stones will bear water-marks and weather-marks or show they have been picked up off the ground and piled together or not?

A. I could not say that.

Q. Can you give us any idea from your experience as to how long those marks stay on?

A. I have had monuments put up over ten or eleven years ago, and I have had occasion to see them again not long ago, and you can see the water-marks on the rocks that were picked up to build this monument. You can see that the base of this monument is not covered up by sand as in old monuments.

Cross-examination by Mr. REYNOLDS:

Q. Well, did you get an indication of age also by the amount of sand gathered around its base and how high it had gone up?

A. Yes, sir.

Q. That would be a fair indication?

A. I think that is a good indication.

Q. That is really the best indication, is it not?

A. I could not say it is the best.

Q. If it is partially hidden by the drifting of the sand?

A. It depends upon the locality where the monument is situated. If the monument were situated in a valley or a place where there was a great deal of sand, I should think every year or so a great deal of it would be there, and it would fail to be a very good indication, but if it were situated on the edge of a mountain or any other place where there is not much sand flying around I should consider that fact a very good indication of age.

286 Q. Dirt is loose enough on the mountains with the winds you have to drift more or less, is it not?

A. Not much.

Q. Not much?

A. Just the disintegration of rocks.

Q. In other words, there is not much soil there to drift, is there?

A. No, sir.

Q. Generally stony and rocky?

A. Yes, sir; a good many rocks.

By Mr. HENRY: I was expecting another witness here, and that is all I will have to offer. He is a very important witness and, I think, will be here in the morning. I have wired to learn whether he is coming or not. It is Miguel Gandara, and, as I suggested in opening the case, I expect to prove by him that his father, Manuel Maria Gandara, furnished the money to Francisco Aguilar with which this grant was originally purchased.

By Mr. REYNOLDS: We will admit it.

By Mr. FRANKLIN: The record may show that we do not admit that fact.

By the COURT: Well, when the witness comes you may offer your evidence.

By Mr. HENRY: Very well, your honors, but so far as the government is concerned it stands admitted, and with that I rest.

Mr. Reynolds stated to the court that, as the hour of adjournment for the day was near at hand, he would prefer to wait until the incoming of court tomorrow morning before presenting his case, and that he believed time would be saved if the indulgence asked for should be granted.

Court thereupon adjourned until 10 o'clock tomorrow morning.

287 THURSDAY MORNING, *March 28th*, 1895—at 10 o'clock.

Continuance of case pursuant to adjournment:

By Mr. HENRY: With the permission of counsel for the Government, the record may show that the date of the death of Francisco Alejandro Aguilar was August 27, 1886, and the date of the death of Manuel Maria Gandara was October 4, 1878.

I would also like the record to show that Mr. Geo. J. Roskrudge is not called as a witness for the petitioner- because he is too sick to attend. He has been subpoenaed, but cannot respond.

YGNACIO BONILLAS recalled on behalf of petitioner- for further re-direct examination by Mr. Henry:

Q. How do you translate or interpret the words "vega del rio" as used in the titulo of 1807?

A. I translated it as "meadow by the riverside."

Q. (Handing witness a book.) What book is this?

A. It is a dictionary of Spanish and English by Velasquez.

Q. Turn to the word vega in that dictionary and read the definition as given there.

A. (Reading:) "Vega, an open plain; a tract of level and fruitful ground; a mead or meadow. Second, in Cuba, a tobacco field generally by the bank of a river."

Recross-examination by Mr. REYNOLDS:

Q. Is there not a very much larger vega below the mouth of the potrero up here near Calabasas, near where you have fixed the north centre monument of the estancia—a very much larger vega there than anywhere else along that river?

A. Yes, sir.

288 Q. Very much more defined and very much larger?

A. Yes, sir.

Q. Did you find in going over this grant a large number of piles of stones which you understood to be mineral monuments put up by miners in stepping off and locating their claims?

— No, sir.

Q. You did not?

A. No, sir.

Q. On the west centre monument how many piles of stones did you find in and around the point fixed as the west centre monument of the Tumcacori grant?

A. To my recollection, there were. I noticed another pile of stones besides the monument.

Q. Didn't you notice more than one?

A. Not piles of stones. I noticed something I would not call a pile of stones.

Q. In the estancia grant, in going from the east to the west centre monument, clear across, did you notice any piles of stones from time to time except those you have designated as the centre monument of the grant?

A. I did not.

Q. Did you go directly across there?

A. Yes, sir; I went in the direction which I thought I ought to go.

Q. You travelled from the east centre monument clear across to the west centre monument directly across the grant?

A. No, sir; I did not.

Q. You did not?

A. No, sir; I did not.

Q. You do not know, then, whether there were any piles of stones from time to time as you go across there, do you?

A. No, sir.

Further redirect examination by Mr. HENRY:

Q. How far is the large meadow of Calababsas from Guebabi, this much larger meadow which you have spoken of in answer to counsel in his first question on cross-examination?

A. I suppose it is half a mile across, or perhaps three-quarters of a mile across.

289 Q. How far is it from the Guebabi to the meadow at Calabasas; how far from the Guababi ruins or from Guabai to the meadow at Calabasas?

A. I hav'n't my books here or I could tell you exactly, but per-

haps the map shows it. Yes; it does (referring to map). It is about four miles.

Q. And is there any dis-inction in the title papers and the ruins of Guebabi?

A. I think there is.

Q. Is there a place known as Guebabi aside from the place known as Guebabi?

A. Yes, sir; there is to my knowledge.

Q. And where is that place known as Guebabi?

A. The place known as Guebabi is at what is commonly known as Benedict's ranch, about a mile down the river from the ruins of the mission of Guababi.

Q. And what was there originally, if you know?

A. I understand that they were the principal farming lands at the mission of Guebabi at that place.

Q. Who have told you that?

A. Several persons. I remember the first time I heard it was in 1876 from Mr. Benedict, who was living there at the time.

Q. Where is Benedict's ranch with reference to this meadow which you took as Guebabi and the centre of the Guebabi grant?

A. It is directly opposite on the west side of the river and not over two or three hundred yards, perhaps.

Q. Is there any evidence of the fact that that place was cultivated a long time ago?

A. Yes; I think there is.

Q. What evidence is there of that?

A. I think there are old ditches there.

Q. Do you know where that principal ditch which runs
290 that place is; the old ditch that comes out of the river?

A. Yes, sir; I have run a line of the levels for a new ditch there and have followed very much the (interrupted)——

Q. Where is the old one taken out of the river?

A. It is taken out near the ruins of the old mission of Guebabi.

Q. What appearance of age has that ditch?

A. It seems to be very old.

Recross-examination by Mr. REYNOLDS:

Q. Mr. Bonillas, is not this vega which you have located as the Vega del Rio near the ruins of old Guebabi, the mouth of a wide gulch that comes down to the river?

A. There is a large gulch, and I so expressed it in my report, that opens into the river at about that point.

Q. Now, does not that vega extend up that gulch? Is it not backed up into that gulch?

A. I would not call it so. I would not call the mouth of that gulch, the extension of the low ground into that gulch, a vega, because it is very sandy, and I would not consider it fruitful ground.

Q. The mouth of it next to the river?

A. Yes, sir.

Q. The vega is back up the gulch from the mouth?

A. Yes, sir; the vega runs towards the south.

Q. Now, how wide is the river just at that point?

A. You mean the river channel?

Q. No; I mean the river valley. How wide is it at that point?

A. I couldn't tell you exactly.

Q. Is it not very narrow?

A. No, sir.

Q. Well, how wide is it?

A. It may be four or five hundred yards wide; I couldn't tell you exactly.

291 Q. How far is it from the point that ceases defining that gulch to the river itself?

A. From which point?

Q. From the point on the north side of the gulch, where it ceases to define the gulch and drops into the valley of the river to the river itself.

A. From that point to the river it is, perhaps, three hundred yards.

Q. How wide is the river at—how wide is the gulch at its mouth?

A. I didn't take any measurements, but I should think it would be two or three hundred yards.

Q. How far is it from the river to the south side of the gulch, where the contour of the country ceases to define it as a gulch?

A. Well, there it is considerably wider. I should think it would be about the widest part of the valley there; perhaps five or six hundred yards.

Q. Now, a line drawn from the point of the gulch—the point of the mesa defining the gulch—drawn south to the point of the mesa defining the gulch and the river—how close would that line come to the river?

A. I do not understand your question.

Q. (Illustrating by sketch.) I mean this point here. That is the north and that is south, and I want to know a line drawn from the point where the mesa ceases to define the gulch on the north, drawn directly to the point where the mesa ceases to define it on the south—how close will it come to the river?

A. I think a line of that sort would come within three or four hundred yards.

Q. Won't it cut it?

A. I don't think it will.

Q. Did not the river make a bend up the gulch?

A. No, sir.

Q. Is that valley at that point three or four hundred yards wide from mesa to mesa, clear across the valley?

292 A. Yes, sir; I think it is. I hav'n't taken any measurements there with the intention of ascertaining the width of that valley, as I said before, and the figures that I am giving are simply from my recollection.

Q. This vega, then, lies up the gulch from the river?

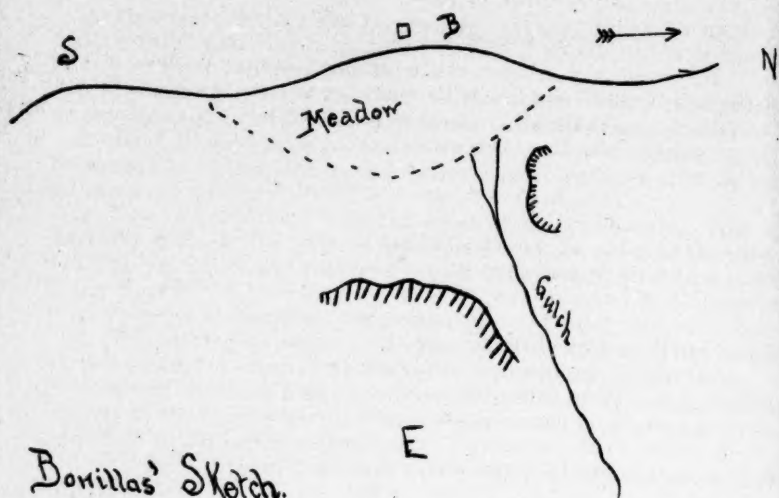
A. Not up the gulch.

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Bonillas' Sketch.

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Q. Which way, then?

A. Up the valley.

Q. Up this way (indicating on the map)?

A. Up the valley of the river. I don't know what you call "this way."

Q. I mean up the river, toward the source of the river.

A. Yes, sir.

Q. Then the vega didn't lie in the gulch?

A. The northern part of the vega, I think, ends about where the gulch goes into the river.

Q. Then the vega is not in the gulch?

A. Not the way I understand it.

Q. The vega is south of the gulch and south of the south line of the gulch, is it?

A. The vega is about southwest from the mouth of the gulch.

Q. South of west from the mouth of the gulch?

A. Yes, sir.

Q. And does not extend into the gulch?

A. No, sir; I don't think it does.

Further redirect examination by Mr. HENEY:

Q. Mr. Bonillas, won't you make an illustration on that blackboard of how that vega lies with reference to the gulch and where the Guebabi ruins lie with reference to the vega?

A. (Sketching on the blackboard.)

(Here follows diagram marked p. 293.)

Supposing this to be the stream of the Santa Cruz running towards the north, and suppose the place called Guebabi, where the houses are, or Benedict's ranch to be at the place marked "B." On the west side there is a bank and there is no agricultural
294 lands in this direction up the river (indicating west and south). The meadow lies about here. I will indicate it with dotted lines. There is a wide gulch coming from the east, and on the north the bank comes about there (indicating on sketch), and on this side the bank comes around about this way (indicating). This is very sandy here and has destroyed part of this meadow. In fact, there is a great deal of sand on it today. There is a wire fence here and now the posts are nearly covered by the sand and it has spoiled this part of the meadow (indicating), and I call this the Meadow del Rio (indicating the southern part). There is also some agricultural lands here (indicating east side of the river), but to my recollection it is not so extensive, and there is also some on the west side of the river.

Q. To what height does the bank rise on the west side?

A. I should think it would rise to about fifty or sixty feet.

Q. And what height on the east side, just this side of the sandy wash you speak of?

A. The lomas hills?

Q. Yes, sir.

A. Well, perhaps more—perhaps seventy-five or eighty feet—some of those hills.

Q. Is it possible to take a ditch from the river and cultivate the land in that gulch or any of it?

A. I tried to do it. I was running the ditch there and I found that I was running uphill and I had to come to the field again. You might take it from away up the river and make deep cuts and get the water there.

Q. Is there any evidence of any ditch having existed there?

A. Not to my knowledge.

Q. In speaking of the width of the vega do you mean right across from west to east, as you have marked, or did you include the sand?

A. I meant all the way down; all the way across. I believe
295 the question was asked as to the width of the valley from the banks to the hills.

Q. Did you undertake to speak with any degree of accuracy as to the width?

A. I said I did not. I did not make any measurements.

By Mr. REYNOLDS:

Q. Don't you lay that mesa that forms the gulch—the north side—do you lay it down as the Guebabi flag?

A. No, sir. That does not run into that at all. There are some intervening ridges there.

By Mr. HENEY:

Q. Where are the Guebabi ruins?

A. Up the river about a mile. There is a steep bank and the ruins would be about there (indicating on the map).

Q. What is the character of the river bed between there and the vega?

A. Very narrow and high. Hills on the west come right to the shore of the river, and from the east, where the ruins are, there are also high banks.

Q. What is the character of the banks?

A. Some sandstone and volcanic formation.

By Mr. REYNOLDS:

Q. You located your east centre monument about in the mouth of that dry gulch, didn't you?

A. Yes, sir. There is a clump of trees right about the place called Guebabi—a clump of cottonwoods—and I located that monument there. I might have located it anywhere within the vega with perfect propriety.

Q. You look up that gulch towards the east centre monument?

A. Yes, sir.

Q. And you say you can see the east centre monument from it?

A. I did not.

Q. Can you see the hill?

A. I didn't say that.

Q. Can you see that from the east centre?

296

A. I don't think you can.

By Mr. HENNEY:

Q. What did you state as to seeing that hill?

A. I said I thought you could go up on some of the elevations, and I thought from that point where I have what I call the Guebabi flag, which is an auxiliary trigonometrical point, I thought you could see the top of that hill. I am not entirely certain, but I think you can see that point from some of the elevations in the neighborhood of the vega. I know from the top of that hill where I have that trigonometrical point you can see the cultivated lands through a gap in the ridges.

By Mr. REYNOLDS:

Q. You say the Guebabi flag station, as you have located it here, is how far from the central monument?

A. I think by applying the scale we could tell that better. I should say that to be perhaps three hundred feet.

COLIN CAMERON recalled on behalf of the petitioner-for further direct examination by Mr. Heney:

Q. Are you familiar with the vega which was taken as the centre initial point of the Guebabi grant?

A. I am.

Q. Have you observed the width of the vega with any degree of care?

A. Yes, sir; with considerable care.

Q. How wide would you say the vega is from hill to hill there?

A. About one thousand yards. I have gone over it and I would just like to show on that sketch on the blackboard a little bit, with your permission.

Q. Certainly.

297 A. (Referring to Bonillas' sketch.) This is exactly right, except up at this end (indicating south end), outside of the field. I remember the time when all this water run close to this bluff, but this filled up in time, and the dirt and debris is thrown to this side and has covered the fence. Beyond the point right here there is a deep incline going into the river, showing where the water used to run, but it has stopped and has thrown this debris that comes from the cañon over there (indicating). I had Mr. Bonillas make that survey, because we wanted to take the water out of there and get as much of this land as we could, and I paid particular attention to it on that account. This gulch comes into the river almost entirely below that meadow, and this is the first place on the meadow where the water can be gotten onto the meadow, and the remains of the old ditch can be distinctly seen along the foot of these mesas, and the rains washing down have obliterated it in some places, but at other places it is still distinctly visible. Where it is taken out at old Guebabi the river has been washed out and cut

maybe ten feet deeper, because you can see about eight feet where they had to cut through the stones to take it out, and the water cannot be gotten to the same level as before below, because it is so much lower down. That is the first place after you leave the old mission that the land can be taken out on the land at all.

Q. Is it possible to take water into that gulch with a ditch?

A. No; you can't do it at all.

Q. Do you know whether you can see that cerro or hill in front of which the east centre monument is from the vicinity of the Vega?

A. Yes, sir; from this ridge (indicating).

By Mr. REYNOLDS:

Q. You have been over this grant called the estancia very much?

298 A. Yes, sir.

Q. And you have seen great numbers of piles of stones which you call miners' monuments?

A. I never have said so.

Q. You hav'n't seen any?

A. Yes; I have seen some.

Q. Well, how many?

A. Oh, well, that is not much of a mineral country, and there is very few miners' monuments around that country. I don't recall any place where there is any monuments now.

Q. Any mill-site locations around there?

A. A few.

Q. And monuments put up?

A. Yes, sir.

Q. How many?

A. There is not many mining location-, and consequently very few mill-site locations.

THOMAS BAYZE recalled on behalf of the petitioner-.

Further direct examination by Mr. HENEY:

Q. Mr. Bayze, are you acquainted with the topography of the country at the vega which was taken as the initial point for the survey of the Guebabi grant by Mr. Bonillas?

A. Yes, sir.

Q. Is that map (Bonillas' sketch) a correct representation of that part of the country or not?

A. Yes, sir; it is.

Q. How wide would you say it is from hill to hill or from bank to bank across the vega?

A. About a thousand yards.

Q. Can water be taken by a ditch and put into any part of that gulch so as to cultivate lands?

A. No, sir.

Q. Do you know whether or not you can see the hill that is in front of the east centre monument, or in front of which the east

centre monument of that grant lies, A from the vicinity of that meadow, or whether you can see any part of it from the hill?

A. I can see the meadow from the hill.

299 Recross-examination by Mr. REYNOLDS:

Q. Do you know anything about the size of the vega up at the mouth of the potrero?

A. Yes, sir.

Q. How large is that with reference to this vega down at the Guebabi?

A. Well, that is a very large valley down there, about a mile and a half across it.

Q. This down at the potrero?

A. Yes, sir; at Calabasas. The mouth of the potrero is at Old Calabasas.

Q. I don't care anything about Calabasas, I am speaking of the mouth of the potrero. The mouth of the potrero is the large and well-defined vega that you speak of?

A. Yes, sir.

By Mr. HENEY:

Q. How far is that from the ruins of Guebabi?

A. I should judge about four miles.

Petitioner- rests.

H. O. FLIPPER, a witness called and sworn on behalf of the defendants, testified as follows:

Direct examination by Mr. REYNOLDS:

Q. What is your business, Mr. Flipper?

A. Special agent, Department of Justice, attached to the United States court of private land claims.

Q. How long have you been in the employ of the Government?

A. Since September, 1893.

Q. What is your profession?

A. Civil engineer.

300 Q. Are you acquainted with Spanish and English?

A. I am, sir.

Q. Can you translate Spanish into English and English into Spanish?

A. I can.

Q. Where were you educated?

A. United States Military Academy, at West Point.

Q. Did you study French at West Point?

A. I did.

Q. And English?

A. Yes, sir.

Q. What has been your business since leaving the army?

A. From the army I went into Mexico and engaged in the survey of public lands.

Q. When I asked you if you studied French I meant Spanish; did you study Spanish at West Point?

A. French and Spanish both.

Q. How long were you engaged in surveying in Mexico?

A. I was occupied there from ten to twelve years and was in that business until I was employed in work for the Department of Justice.

Q. Take the document which is introduced in evidence as the title of 1807 and turn to the proceedings of the first survey?

A. I have it.

Q. Now read in Spanish that first description of the first survey.

A. You mean the whole of it?

Q. No; the first proceedings on the 14th of January, 1807, where it says, "We took a direction toward the north down the valley," or just before that, where it begins, "Having myself set up a well-adjusted compass"—from there on?

A. (Reading:) "Y puesto por mi un abujon bien ordenado que tambien he traido para el efecto tomamos el biento del Norte y Valle avajo y se fueron cuidadosamente midiendo cincuenta
301 cordeles q. terminaron frente del divisadero que esta entre la cida al bajio y dos Alamos muy gruesos que se hallan fuera del á caja del Rio en donde mande poner y se puso un monton de piedras en señal de Mojonera."

Q. What is the last part of it, "mark the place for the monument"?

A. Yes, sir.

Q. Now go on still further.

A. (Reading:) "No siguiendo mas adel ante por este rumbo respecto á llegar á las pertenencias del Presidio de Tubac y bueltos al Centro se tomo el biento del sur por el qual se fueron midiendo y enotando con igual cuidado trescientos treintas y dos cordelas q. remataron á el lado de arriba pégado á la Cañada inmediaanta al Sitio llamado Calavasas de donde volvimos al centro y se midieron escrupulosamente biento al Oriente Siete cordeles desde la Caja del Rio los q. remataron al pie de la Loma dentro de un mesquital en cuyo Sitio mande poner y se puso otro monton de piedras en señal de mojonera y haviendose dado por ese rumbo los siete cordeles" (interrupted)——

Q. How far have you got now; where they returned to the centre?

A. Yes, sir; and measured west.

Q. Then stop right there. Translate that for us into English.

A. "And having placed a compass in good adjustment, which I also brought for the purpose, we took the wind to the north and down the valley, and there was carefully measured fifty cordeles, with terminated in front of the divisadero which is between the descent to the valley——

Q. Translate divisadero; we don't want anything but English in this.

A. "In front of the lookout hill which is between the descent to the valley and two very large cottonwood trees which are outside of

the channel of the river, where I ordered placed and
 302 & 303 there was placed a pile of stones to mark the place for
 the monument. Not going further in this direction, be-
 cause we had arrived at the holdings of the presidio of Tubac, and
 having returned to the centre, a direction toward the south was taken,
 in which direction they proceeded, measuring and counting with
 equal care 332 cords, which terminated on the upper side, adjoining
 the cañada, close to the sitio or place called calabazas, from which
 place we returned to the centre, and there were scrupulously meas-
 ured in the direction towards the east seven cords from the channel
 of the river, which terminated at the foot of a hillock in a mesquite
 grove, at which place I ordered put and there was put a pile of
 stones to mark the place for a monument; and, having measured
 in this direction seven cords, we returned to the place to take the
 centre" (interrupted)—

Q. Now go ahead to the minutes of the second survey, on the
 15th of the same month; the survey of the stock farm.

A. All right, sir; I have it. At what point shall I start?

Q. Commence with the word witnesses, "placed myself at the
 place pointed out as the centre of these lands." Give us the Span-
 ish as it is there, so that we may get it into the record.

A. It begins on the reverse side of leave 12, the 4th line from the
 top: "Me constitui en el punto Centrico señalado de estas Tierras y
 puesto el abujon bien ordenado se tomo el viento del Oriente para
 el qual se fueron midiendo y contande escrupulosamente viente y
 siete cordeles que remataron en un Cerro y haviendo sido imposible
 pasar adelante por lo muy fragoso é inasequible de montes escarpado
 de Cerros me pidieron los interesados que los cordeles restantes
 selos diese por el rumbo del Potrero que se halla rumbo al poniente
 y conformandome con esta solicitud como tan regular y admisible
 mande poner y se puso al pie de dicho Cerro de San Caye-
 304 tano por el costado q. mira al sur otro monton de Piedras en
 señal de mojonera."

Q. Now, go back and translate that, will you?

A. "I placed myself at the point pointed out for the centre of
 these lands, and, having set up the compass in good adjustment, a
 wind to the east was taken, along which they went measuring and
 scrupulously counting 27 cords, which terminated on a hill, and, it
 being impossible to advance further on account of the great rough-
 ness and inaccessability of the timber and abruptness of the hills, the
 parties in interest requested that the remaining cords be given them
 in the direction of the potrero, which is in the direction of the west,
 and, agreeing with this application as regular and admissible, I
 ordered placed and there was placed at the foot of said Cerro San
 Cayetano hill, on the side that looks to the south, another pile of
 stones to mark the place for the monument."

Q. Now, turn to the question of the first witness, Apodaca.

A. Yes, sir; I have it.

Q. Now, his answer to the first question, on page 15, take so much
 of that answer in Spanish to the effect that he owns an interest in
 the ranch of the Romeroes and read me the Spanish.

A. Beginning where?

Q. "That the deponent owns an interest in said ranch of the Romeros." It is the first answer in Apadaco's testimony.

A. It is on the back of leaf 15, in the 12th line, beginning with the words, "El declarante es interesado en dicho Rancho de los Romeros y q. save q. existen en el dia las Mojoneras q. dividen las Tierras de Tumacacori y Romeros estando dichas Mojoneras puestas
adelante del Sitio llamado la yerba buena y q. por el rumbo
305 del Potrero save y jura estaban puestas las mojoneras arriba la Cienega grande y por el rumbo del oriente estaban puestas las mojoneras en el Cajon de Conoita en una Mesa que hace mui tendida."

Q. That is not right; you have got the wrong one. Very evidently you have got ahold of the wrong question.

A. No, sir; I have the right one, but in the translation the part I read may be placed first on account of the verb.

Q. Yes; that is so; you are right. Now, translate it.

A. "The deponent is interested in said ranch of the Romeros, and that he knows that at the present day the monuments which divide the lands of Tumacacori and the Romeros exist, said monuments being placed beyond the place called Yerba Buena and in the direction of the potrero he knows and swears that the monuments were placed above the large marsh and in the direction of the east the monuments where placed in the Sonoita cañon on a mesa which is very flat."

Q. Now, take the testimony of the third witness, Pedro Baes.

A. Yes, sir; I have it.

Q. Now, commence down at the latter end of that answer, where it says, "Also in the direction of the potrero the survey reaches as far as the Pajarito," and so on. Now, give me the Spanish of that.

A. It is on line 16, on the back of leave 17, "Por el Potrero llegavan las medidas hasta el Pajarito arriba de la Cienega grande donde estaban puestas las mojoneras y rumbo al sur hta. el Cajon de Sonoita en una loma mui tendida."

Q. Now, translate that into English.

A. "And in the direction of the potrero the measurement reached as far as the Pajarita, above the large marsh, where the monuments were placed, and the direction to the south as far as the Sonoita cañon, at a very flat hill."

306 Q. (Handing witness several books.) Now, Mr. Flipper, I wish you would take these dictionaries and give me the definition of the word "temporalities," or whatever the Spanish word is used in these expedientes. But before that I will ask you if you have had occasion to look it up carefully.

A. I have, sir. I have translated three definitions from three different dictionaries. I have two of them here (producing a paper).

Q. Have you given the translation of the definition care?

A. Yes; I have.

Q. Have translated it carefully?

A. I have, sir.

Q. Well?

A. One definition from the Spanish dictionary of the Spanish academy, which is the dictionary I have in my hand, which has the seal of the Royal academy on it, published in Madrid. The definition given here is: "Proceeds or any profane thing which ecclesiastics receive from their benefices or prevends." Another definition is from the dictionary of Carlos de Ochoa, which I have not with me. That definition is: "Aggregate of proceeds or any other profane or worldly things ecclesiastics receive from their benefices or prevends." The third definition is from Escreche's Dictionary of Legislation and Jurisprudence and is: "Proceeds, revenues, or any other profane things ecclesiastics receive from their benefices or prevends, and of which it is customary to deprive them when they contravene the laws—as, for instance, when they authorize the marriage of a minor who has not obtained the consent of his elders."

Q. Now, I wish you would give me the definition of the word in the original document "tendare" or "tendida," whichever it is?

A. Here it is, "loma tendida," where they measured from the church to the west centre monument.

307 Q. What is the meaning of the word tendida there?

A. Spread out; flat.

Q. What is the word derived from?

A. It is from the Latin tendar; it is the past participle of the Spanish word "tender," which means to spread out, to unfold something which has been doubled up.

Q. That is not the noun, then?

A. No, sir; it is the past participle of the word "tender;" it is in the feminine gender, agreeing with the noun loma, which is in the feminine gender.

Q. You are familiar with the system of surveying under this old Spanish system, are you?

A. I am, sir.

Q. What is a "fundo legal"?

A. "Fundo legal" is that amount of land which is lawfully allowed for the establishment of a town corresponding with our word town site.

Q. Did you ever have occasion in your surveying in Mexico to survey a town site?

A. Yes, sir.

Q. What is called in the papers "fundo legal"?

A. Yes, sir.

Q. Were your surveys approved?

A. They were, sir.

Q. Now I read from the petition for this grant of 1807 which says that the understanding that the four leagues, one to each wind, should be measured for us as town lands; now, how would you survey that under the rules of surveying under the Spanish system?

A. I would like to explain, first, that a town site is a small tract of land inside of that, usually five hundred varas from the church in each direction, and the town lands is one league—as said there,

one league to each wind. If we measure from the centre till we measure off a league from the centre to each wind we hav-n't a square, but if we measure from the corner a league to each wind we would measure a square all around.

308 Q. The league called for is lineal measure?

A. Yes, sir; it is. I have surveyed more than a dozen Indian towns where the description is similar to that.

Q. Where do you get the justification of that manner of surveying?

A. What, measuring from the centre?

Q. Yes. Take the town of Tumacacori. Where do you get the authority of making a survey that way?

A. It is given in Galvan's Ordinances of Land and Water; also in Escreche. It is also defined in the laws of the Indies—law 8, title 3, Book 6, Compilation of the Indies.

Q. In making your survey under the Spanish system, where you have the centre point given, and from that establish the east, west, north, and south centre points, what is the custom with reference to the balance of the survey, where no new points are given?

A. The outside boundary lines are made respectively parallel to the two lines of the survey—the crossing lines.

Q. Is that the general rule?

A. That is the general rule. That is the rule laid down in Galvan.

Q. Is that the rule followed in surveys in Mexico?

A. Yes, sir—that is, where only the two lines have been measured. Where the outside lines are measured they are measured parallel to those two, and where they are not the supposition is they should be that way.

Q. I speak of instances where the centre points are established.

A. You then draw through the extremities of those two lines other lines respectively parallel to them.

Q. Have you been over the Tumacacori and Guebabi claim?

A. I have, sir; a number of times.

309 Q. I will get you to state whether or not in going over it you saw what is purported to be those monuments testified to by Mr. Bonillas.

A. I have, sir.

Q. I will get you to state whether or not you saw other piles of stones that might well have answered for monuments or anything else.

A. I did, sir; quite a number of them.

Q. Get your memoranda and let me have it.

A. (Referring to memoranda.) Near the west centre monument of the Tumacacori. Running west along the summit of that ridge for about one hundred yards there are fourteen piles of stones varying from one to two feet in height.

Q. Those piles of stones appear to be old, appear to have been there a long time?

A. Yes, sir; there is no indication whatever that they are recent. The pile of stones taken as a monument, the base of that is just like

these others precisely. It appears to be old. There is no indication of any newness about it, but the stones on top of it have been piled there within recent times; I don't know how recent, but the stones themselves show they have been taken out of the ground and put there.

Q. The old stones do not indicate that they have been out of the ground and piled up there for eighty-seven years, do they?

A. The stones on top?

Q. Yes, sir.

A. No, sir; they have been put there within five or six years, I should judge. At the east centre monument—that is, in the mesquiteal—and back of that is a mesa that runs east of it and turns and runs southerly till it comes to what is known as the San Cayetano wash, probably a mile. Along the ridge of that is piles of stones
310 not over five or six feet apart, a large number of them.

Those piles of stones vary from a foot to two feet in height and from three to seven or eight feet in diameter. They are all old; no indication of any newness about any of them. Now, going from the mesa to the northeast corner of the Tumacacori, at the divisadero, you go down from the mesa and across the gulch and get onto another mesa, and that mesa is literally covered with piles of stones similar in all respects to this centre monument. There must be hundreds of them. The difference is the stones are different; they are porphyretic stones, while the stones at the east centre monument are quartzos-, such rocks as usually found in the bed of a stream—whitish rocks.

Q. Go ahead.

A. Going down the east side of the valley of the Santa Cruz (interrupted)——

Q. Down or up?

A. Upstream, on the east side of the valley, I didn't find any piles of stones except such as had been put there to hold flags, as I judged, until we got opposite the Agua Fria ranch as laid down on that map. Back in the hills some ways, probably a mile or a mile and a quarter from the river, there were quite a number of those piles of stones, many of them very large, with Indian hieroglyphics on them—I don't know what they mean—and coming in the direction of New Calabasas there are quite a number of piles of stones on the edge of the mesa.

Q. Are they old or new?

A. All old. Crossing over the Soñoita cañon, right in front of the station on which there is a large monument that held a flag, along the ridge of this, there are a number of old piles of stones.

Q. What are their sizes?

A. Some of them are quite large, from three to four feet in
311 diameter and from six inches to a foot and a half in height.

By Mr. HENEY:

Q. That is along the ridge?

A. The ridge right in front of the Calabasas station—east of it. In going along the ridge in a northeasterly direction and turning

east towards what is known as the twin hills, going along the lomas till you get to the east centre monument of the Guebabi, there are twenty or thirty piles of stones in that section of the country.

By Mr. REYNOLDS, resuming:

Q. How about the size of them?

A. About the same size as the others. They vary in size, two to three feet in diameter, and some of them are stones just brought together, lying on the ground, not piled up, from six inches to a foot and a foot and a half in height.

Q. These piles of stones that you have been describing, do they look as if they had always been there in that shape—left there by nature or rathered there?

A. They have been put there by human hands beyond any question. In going south from the south centre monument of the Guebabi in the foot-hills of the Benedict mountain there is any number of piles of stones there, placed there, as I was told, for mining locations.

Q. Go ahead.

A. As you come up the river from the west centre monument of the Tumcacacori on the west side of the cañon, on all these ridges that come down to the river—the ridges between the cañons—you find piles of stones, some places one and others two or three, till we get down twenty-four thousand feet from the old mission of Tumcacacori—I am sure it must be that distance—and there is what appears to be the remains of walls and foundations of houses,
312 and on the hill back of that there are four or five piles of stones and manure immediately back of it.

Q. Now, where you have described these ruins coming up the river?

A. Yes, sir; from the west centre monument of the Tumcacacori.

Q. Yes. Now, what is the extent and nature of those ruins?

A. They cover from one hundred to one hundred and fifty acres. It is a place evidently that had been walled in. The remains of the foundation were there. The foundation was stones, and the walls probably were adobe and melted away. The foundations of the houses are there, and there are ruins of old stone mortars, used for what purpose I do not know. I have no idea in the world what those ruins are.

Q. Are they apparently the ruins of some human habitation?

A. Yes, sir; ruins of some human habitation.

Q. Well, go on.

A. Coming still up the river from this place on the west side of the Santa Cruz, on all the ridges that come down to the river between the gulches that come into the river there are piles of stones.

Q. Proceed.

A. Near the west centre monument of the Guebabi there are several piles of stones beside the one described as the monument and the large pile of stones on the hill which held a flag. They are small.

Q. Do they look like collections of stone made by human hands?

A. Put there by human hands; yes, sir.

Q. Ancient or modern?

A. They are old. About a mile due west of the west centre monument of the estancia there is an immense pile of stones, containing probably twenty or thirty tons; an immense thing.

313 I don't know what it is put there for.

Q. Go ahead.

A. As you come around this, coming in towards the potrero, on those hills you find small piles of stones in the same way, not piled on each other, but just brought together.

Q. Go ahead.

A. At the south centre monument of the estancia, on the mesa below the corner—the pile taken as the corner—there is a small pile of stones. What that is I do not know.

Q. Now, at the vado seco, for instance.

A. The monument there is located on this map, and crossing the river as you rise the mesa on the other side is another pile of stones.

Q. How big is that?

A. Not a large one—three feet in diameter and a foot or a foot and a half high. Right southwest of the Yerba Buena on the ridges there are three large piles of stone, probably three to four feet in height, and probably about the same in diameter. One of them is a monument, I think, of the Buena Vista grant, so claimed.

Q. Go ahead.

A. I don't know of any others—oh, yes; near the east centre monument—this hill that has been described as the Loma Tendida, on the extreme east end of it is a high sharp peak, and on this peak is a large high stone monument, which, I am informed, is a monument of the Soñoita grant. As you come along that ridge in a southwest direction there are seven or eight piles of stones.

Q. There is a pile of stones besides that that marks the section corner?

A. Yes, sir; in the same way.

Q. Wherever it marks a section corner it is so indicated on the monument?

A. Yes, sir; but sometimes the stake is rotted and gone, and piles of stones are put in place of it; that is true.

Q. Wherever that is the case it shows they are recently built?

314 A. Oh, yes, sir; you see the mark on the stones or it is indicated in some other way, although sometimes the indication is gone.

Q. Now, go down towards that Vado del Apache. What do you find in that vicinity?

A. I didn't go that far down; that is above the corner.

Q. What is the size of that old burying ground at the old Tumacacori church? Did you ever measure it?

A. I did, sir.

Q. What is the exact size of it?

A. (Referring to memoranda.) A. 175 feet 6 inches long by 61 feet wide.

Q. What did you measure it with?

A. A steel tape. That is measured on the inside.

Q. (Exhibiting photographs marked "H 5.") Examine those and state whether or not many of the monuments you have been describing as finding all over that country look anything like those.

A. Yes, sir; a great many of them look like those, a great many of them.

Q. (Exhibiting photograph marked "II.") Look at that.

A. That is what is claimed as the east centre monument of the Tumacacori.

Q. Did you find many such monuments over that country?

A. Yes, sir; on the mesa I have described, between this monument and the divisadero, the mesa there contains hundreds of them, with the exception that those rocks are quartzos-, whitish rocks, and the other rocks are porphyritic rocks; they resemble them very much.

Q. (Exhibiting photograph marked "D 5.") Look at that.

A. Yes, sir; that is the east centre.

Q. Did you find any other piles of stones looking like that?

A. Yes, sir.

Q. Now, I hand you Exhibits "G 5" and "T," both having a stick in them. Did you find many looking like those?

A. Found some like those; not a great many.

Q. How are those with reference to their apparent construction, especially the top part?

A. The top is recent. I meant to say by that that the top was built at the different time from the base. The base appears to be old.

Q. Do you think those monuments would have stood in that country for eighty-seven years?

A. No, sir; they would not, in my opinion.

Q. (Exhibiting another photograph.)

A. This is marked "I 5."

Q. Do you know what it is?

A. Yes, sir; that is the monument above the Cienega Grande that has been piled up. I have seen it when it was much smaller *when* it is here.

Q. When was the first time you ever saw it?

A. About 1887, I think, sir.

Q. Was it as large as that then?

A. No, sir.

Q. What was its character then?

A. The top wasn't on it.

Q. Now, look at the photograph marked "B 5." What do you say about that?

A. I have seen that monument also.

Q. What is it?

A. It is the south centre monument of the Guebabi.

Q. That is the estancia?

A. The estancia; yes, sir.

Q. What do you say about the construction of that?

A. The same as all the others; the top of it has been built up.

Q. Did you ever see it before?

A. I saw this monument the first time last January.

Q. Was it in that condition then?

A. Yes, sir; about as it is now.

Q. Now, take this photograph marked with a- "X" on its face, look at it, and tell me what it is.

A. That is the centre monument of the estancia.

Q. What is the apparent condition of that monument?

A. That monument is entirely new; it wasn't there in February, 1894.

Q. Now look at this photograph, "E 5," and tell me what it is.

316 A. It shows the top of a big hill by the Sonoita cañon; it is a little west of north—not certain whether east or west, but it is north of the east centre monument of the estancia.

Q. That is the large hill which lies to the north of the present location by Mr. Bonillas of the east centre monument?

A. Yes, sir.

Q. Now, I show you again photograph "H 5" and I ask you what are those mountains, the outlines of which you see in the distance.

A. The one in the foreground in the San Cayetano.

Q. And what is the other one beyond?

A. The Santa Rita.

Q. I show you photographic Exhibit "E 5." What is that?

A. That is the east centre monument of the estancia.

Q. Yes; and in what direction was that photographer when he took the photograph, looking towards the face of the photograph?

A. The instrument was in a southwesterly direction.

Q. That would make the object in a northeasterly direction from him?

A. Yes, sir; this is looking toward the north end of the Patagonia mountains.

Q. I notice a lot of trees on land apparently very much lower than where the photographer must have stood?

A. I think those trees are only on the slope of the mountains there. The valley of the Sonoita is further over.

Q. What is the declivity northeast of that monument over on the other side?

A. It is not great. The wagon road comes around that. That was the end of the hill which I described a moment ago where the monument is on the peak.

Q. The wagon road is south of the present monument?

A. Yes, sir; both southeast and north. The wagon road comes from the southwest up the gulch.

Q. What gulch does it come up?

A. The big gulch from the Guababi.

317 Q. The big, dry Guebabí gulch?

A. Yes, sir; it comes up and strikes the ridge which I

have described a moment ago, and running nearly southwest-west of this monument, and then runs along the foot of this ridge and comes into another wagon road that comes from the vado seco. Those two roads come together near the southeast corner of the section there. The point where they come together is little over a mile from this monument. The road runs around the hill (interrupted) —

Q. What hill?

A. Where the monuments are. I am told it is called Shibell's hill, and the road comes around the east side of it and into the Sonoita valley.

Q. Then it passes to the south and east of this monument?

A. Yes, sir.

Q. Goes around it?

A. Yes, sir.

Q. Would there be any difficulty in surveying a line over across there on account of the inaccessability of the timber and hills, and so on?

A. No, sir; you have gone over all the rough ground when you get to this point. There would be no difficulty in the world. That section of the country from here on and from the centre of the estancia up to this point is not one-tenth as difficult and rough as that from the same centre monument of the estancia to the west monument. The foot-hills of the Benedict mountain there is about as rough a piece of country as there is in southern Arizona. It is broken up with gulch-s and is rocky.

Q. You know where what is known as the Cerro San Cayetano is situated?

A. Yes, sir.

Q. Have you always known it as the Cerro San Cayetano?

A. Ever since I have been in the country; yes, sir; about nine years.

Q. What direction is that from the mouth of the potrero?

318 A. From the mouth of the potrero it is a little east of north.

Q. Now, what is the condition of the country around the foot of that with reference to timber?

A. When you get into the foot-hills of the Cerro San Cayetano there is mesquite and cat-claw. It is rough and broken.

Q. Is it heavily timbered?

A. No, sir; there is quite a quantity of mesquite and cat-claw and some others.

Q. Well, as compared with the foot of the hill and the country over at the east centre monument is it as inaccessible?

A. It is much more rugged and inaccessible and much more precipitous.

Cross-examination by Mr. HENEY:

Q. Mr. Flipper, do you own any interest in the lands that are in conflict here or do you claim any interest?

A. I do not own any interest, but I attempted to file on one hundred and sixty acres at Calabasas and it was rejected.

Q. Do you not still claim and didn't you publish notice to the world that you claimed one hundred and sixty acres of the best land in this Calabasas grant?

A. I published notice that I filed, and that the filing was rejected, and that the decision had been appealed from.

Q. And notifying everybody to keep off of it?

A. Nothing of that kind; no, sir. I will tell you what the notice was if you wish.

Q. Well, what was it?

A. A man jumped the tract of land and was living on there and he died or was killed and his administrator attempted to sell it and I notified people not to buy it; that I claimed it.

Q. And you still claim that interest?

A. I do.

319 Q. That is one hundred — sixty acres?

A. Even; yes, sir.

Q. That is as good a piece of land as there is within the Guebabi grant, as claimed here?

A. It is not on the Guebabi; it is on the Tumcacaori.

Q. Well, that is as good a piece as there is on the Tumacacori?

A. No, sir; I do not think it is. It is not as good a piece of land as some others because of the difficulty to get water on it; but it is a good piece of land; there is no question about that.

Q. Best as you could get ahold of?

A. The rest had been taken; yes, sir.

Q. You are further interested in it, having been employed by the squatters to examine this grant and report upon it before you were ever employed by the Government?

A. I was not employed by the squatters and never received a cent from them for doing anything.

Q. Did you make an examination of this grant for any purpose prior to being employed by the Government?

A. I translated the expediente or testimonio of title at the request of Judge Barnes and furnished him some information as to it.

Q. Did you make a full report on it?

A. I did not.

Q. At that time did you go to the different places called for in the expediente and make an examination?

A. Of the grant on the ground?

Q. Yes, sir.

A. I did not, sir.

Q. On the ground?

A. I did not, sir. The first time I ever went to the different calls—I will give you the date exactly—it was February 19th, 1894.

Q. At the times you saw these other monuments that you speak of, at an earlier date than that, how did you know they were
320 the monuments of the Tumacacori or Guebabi claims?

A. I didn't say that I saw any of the monuments prior to this time except the one above the Cienega Grande. That was

shown to me by Mr. Charles Altschul, who claimed a tract of land which he said was between the Calabasas and Nogales, and he took me out there and showed me that monument and told me it was the monument of the Calabasas grant. At that time I knew nothing whatever of the Calabasas grant.

Q. Have you read the title papers of the Nogales grant?

A. I have.

Q. Don't they state that there is about a thousand feet between the north monument of that grant and the south monument of the Calabasas grant?

A. One thousand steps it says. At that time I had seen none of the papers in either case—that is, of either grant.

Q. (Exhibiting a paper.) Examine that and state whether that is a copy of your report made to Judge Le Barnes upon this grant, or whether that is the original of that report.

A. I think this is; yes, sir.

Q. Examine the signature at the end of it and the affidavit.

A. Yes, sir.

Q. You have sworn to it as correct, haven't you, on the back page?

A. I have sworn to the correctness of the translation.

Q. And that you then knew all of the laws of Mexico relating to the subject; doesn't it go on and say that?

A. No, sir.

Q. What does it say?

A. (Reading:) "That the foregoing translation, carefully and scrupulously made by him, is a true and correct translation of what purports to be the original title or patent of what is now known as the "Tumacacori and Calabasas private land claims," situated in the Tucson land district, Pima county, Territory of Arizona. Deponent further declares that his true full name is Henry Ossian Flipper; that he was educated partly at Atlanta University, Atlanta, Georgia, and partly at the United States Military Academy, West Point, New York, at which latter institution he was graduated and granted a diploma; that he learned the Spanish language at said military academy, beginning the study thereof in September, 1874; that he has been engaged continuously for the past six years on the survey of public and private lands in the Republic of Mexico; that during that time he has examined nearly two thousand Spanish and Mexican land titles, ranging in dates from October, 1665 (title of Turicachi, district of Arispe, State of Sonora), up to 1889; that he is conversant with the methods of survey and forms of titles in use in that country, as well — with all the land laws in force under both the Spanish and Mexican regimes, and that he believes himself thoroughly competent to translate and pass on any Spanish or Mexican land title that may be presented to him.

"And further deponent saith not." I endorse that now.

Q. Had you examined two thousand titles in those ten years?

A. I should judge about that many, sir.

Q. Then you must have examined at the rate of one for every day and a half?

A. I haven't calculated how many I would examine in a day, but I can tell you the section of country in which the titles were that I examined.

Q. What?

A. Nineteen out of the twenty-one counties in the State of Chihuahua; every private-land title in those nineteen counties.

Q. What do you mean by examining the titles of those? What did you do with reference to the titles?

322 A. They were testimonios like this.

Q. You read the title?

A. I read that over and made such notes as I required for my work as to who issued the title and when and where, and that information was used in my report to the Government.

Q. You don't mean to say you examined the archives of those?

A. No, sir; I said titles, not archives.

Q. Examined the titulos?

A. Yes, sir.

Q. Do you know where the Tumacacori church is?

A. Yes, sir.

Q. And do you know the graveyard which is in the rear of the church?

A. I do, sir.

Q. And within that graveyard do you know a circular mortuary which is shown by the photograph marked "R"?

A. That is it, sir.

Q. In your opinion, was not the cross which was taken as the initial point for the measurement of the Tumacacori claim on top of that mortuary?

A. My opinion now is that that cross undoubtedly stood on top of that mortuary. I don't think there is any doubt about it.

Q. And the starting point was in front of that cross?

A. Inside of that enclosure. I don't think there is any doubt about it.

Q. And in front of that cross?

A. I don't think there is any doubt about it.

Q. Do you know the divisadero or the lookout hill which is to the north of the Tumacacori church?

A. I do, sir.

Q. That is a well-known place, isn't it?

A. Yes, sir.

Q. And is the place taken by Mr. Bonillas in his map?

A. Yes, sir; it is the place taken by Mr. Bonillas in his map.

Q. And aren't there some cottonwood trees growing outside of the bed of the river bank at that place?

323 A. There are—yes, sir; but those cottonwood trees are on the west side of the river right directly opposite. But there are cottonwood trees on both sides along there; quite a thicket of them.

Q. Is not that practically the only place along the river where they grow outside of the river banks?

A. I don't know as I ever saw a cottonwood growing in the bed of the river. They grow on the banks of the river.

Q. In that neighborhood?

A. Just above that, north of it. They grow really in the bed of the river, for there the river spreads over all the country.

Q. And at this point they are outside?

A. Yes, sir; they are outside of the river there.

Q. Now, in reading the title papers of 1807, is it not your opinion that it was the intention to take the centre or starting point of the estancia or Guebabi grant in the valley land near the old mission (interrupted)——

Objected to as calling for a matter of opinion, which the court will determine for itself; also because it is not cross-examination. It is a question of intent of the granting clause or intent of the surveyors which the court will determine for itself from the title papers.

Q. (Continuing :) —extending down the Santa Cruz river to include the valley lands around the mouth of the Potrero creek?

A. My opinion is, after careful study of that expediente, that the estancia should include the ruins of the Guebabi, but that the centre should not be near the mission. That is my opinion now. There is nothing in the expediente which says where the centre was placed, except in the vega of the river. It does not locate the vega which was taken.

324 Q. At the time you made this report, on the 5th day of September, 1890, you then stated that it was your opinion that it should be taken as near as possible to the mission, didn't you?

A. I may have so stated at that time. I have made a more careful study of the ground since then.

Q. Do you know from the fact that the Apache Indians always caused trouble that it would have been the most natural and probable thing to have taken it as near to the mission as possible?

A. It might have been if there had been a mission there, but those were ruins.

By Mr. REYNOLDS: I object. This is argumentative, based on direct examination, as to his original opinion.

Objection sustained.

Q. Do you translate the word "montes" and the description of that east centre monument in relation to the description of that monument—do you translate that phrase in the titulo of 1807 to mean timber?

A. I do now; yes, sir; woody place. The word means both things. It means mountain or hill, but in this connection I translate it to mean "wooded place"—timber.

Q. On March 23rd, 1895, at the office of Mr. Reynolds, in this building, in the presence of Mr. Bonillas and myself, did you not

state that the reason you translated it as "timber" was because in the original there was a comma after the word "montes," and that was what made it read timber instead of mountain?

A. I stated to you that there was a comma in the copy I had and showed it to you in addition. It is lying on the table, and I will show it to you again. I very distinctly remember it.

Q. But you have not answered my question.

A. Referring to this, I did not.

325 Q. Didn't you state you took your translation from the original?

A. No, sir; I said I made that copy from the original.

Q. Then answer the other part of the question. Did you not state at that time and place in the presence of the persons I have stated that the reason which caused you to translate the word "montes" as meaning "timber" in preference to "mountains" was because there a comma after the word "montes," and that was what made the distinction?

A. I most decidedly did not. I can explain to you what I did say, if you wish to know.

By Mr. REYNOLDS: Explain, if you want to.

By the WITNESS: I told you there was a comma after the word "montes," and turned my copy over to you and showed it to you, pointing with my thumb to the place. I told you I had made this copy, which I had done, and I made my translation from that copy. Now, the reason there should be a comma after the word montes is it is plural, and therefore the word "escapada" would not agree with "montes," and the hiatus would be there whether the comma was placed in the original or not.

Q. You did state you made your translation yourself from the original?

A. No, sir. I said I made my copy from the original.

Q. I meant to say your copy.

A. Yes, sir.

Q. Has this copy a comma after the word montes, this paper that I have?

A. I couldn't tell you without looking, for I don't remember.

Q. Examine it (handing document to witness). This is the original of 1807?

A. (After examining.) There is no comma after "montes."

Q. There is none here, but in your copy of that which you made you put in a comma?

A. I did, and that is the comma I was speaking to you about and showed to you.

326 Q. And did not you state that the reason it meant timber was because of that comma being in there?

A. It will be ridiculous that the comma would change the meaning of a word.

Q. Well, you can answer whether you did or did not.

A. I did not say so.

Q. Have you ever seen a comma that changed the entire construction of a sentence?

A. Yes, sir; but not the meaning of a word.

Q. In running from Guebabi east or in an easterly direction would you ever come to the San Cayetano mountains?

A. You would not.

Q. In what direction are they from Guebabi?

A. Northwest.

Q. In what direction are they from the meadow at the potrero near Calabasas?

A. North.

Q. And how far north?

A. Oh, I don't know the distance; probably five or six miles. I will give you the exact location of the highest point; it is exactly north of the old ruins of Calabasas.

Q. Then to run a line from either the potrero meadow or the Guababi meadow as taken by Mr. Bonillas and reach the San Cayetano mountains would be an impossibility?

A. On an east line certainly; absolutely impossible.

Q. And if you run towards the north it would simply come directly in conflict with the Calabasas grant, would it not, in joining your line afterwards?

A. To run where?

Q. North to the San Cayetano mountains from the meadow of Calabasas.

A. Running north you would not strike the San Cayetano mountains at all.

Q. Aren't they north of the meadow at Calabasas, at the potrero?

A. They are north of the old ruins of Calabasas.

Q. I was speaking about the potrero meadow you were speaking of.

327 A. It lies a little west of the old ruins at Calabasas.

Q. The meadow does, as I understand you?

A. Yes, sir; a little southwest.

Q. And from that meadow to the San Cayetano mountains is what direction?

A. Nearly north.

Q. And that meadow is where from the southern boundary of the Tumacacori grant as claimed and shown by our map?

A. As shown by your map it is inside of the southern end of it.

Q. So that to run north from that point for the purpose of getting your estancia would be an impossibility, would it not—that is, it would be simply taking in what you already had?

A. Yes, sir.

Q. And it would be impossible to run in that direction and make it join to the Tumacacori grant under any construction of those papers?

A. That is taking the starting point Mr. Bonillas has; yes, sir.

Q. Or taking the starting point at the potrero of the Calabasas meadow you speak of?

A. That is another question.

Q. Would it be impossible?

A. It would be impossible to run east, but you could agree with the calls of that expediente better than he does, in my opinion.

Q. Suppose you went to the San Cayetano mountains, whatever direction it is, taking the potrero near Calabasas as the starting point, would it not be impossible to have the Tumacacori grant made according to the calls of this paper or according to the courses and distances laid down in the paper and have the southern boundary of it join and be one with the lands of Tumacacori?

A. That is a difficult question to answer, because I have got to assume something.

Q. Well, you made a map, didn't you, which purports
328 to run according to courses and distances?

A. That is a copy of Mr. Harris' map; I simply copied it.

Q. This marking here in blue lines on the map is running according to courses and distances of the Tumacacori grant?

A. Exactly, as laid down in the expediente.

Q. And if you started here (indicating) the southern boundary would bring it here (indicating)?

A. Yes, sir; it would.

Q. And if you started at the potrero at Calabasas, that is over here?

A. No, sir; it is right here (indicating).

Q. Now, if you run to the San Cayetano mountains from there would it not be impossible to run the other grant according to the calls of courses and distances in the expediente of 1807 and make that grant join this one?

A. It would be absolutely impossible; they would be separate.

Recess till 2 o'clock.

Q. If you reverse the process and run a line west from a point at the foot of the San Cayetano mountains, at the most southern point of the mountains or any other point of the mountains, it will be entirely north of the most northern point of the estancia or Guababi grant as described in this survey, will it not?

A. In Mr. Bonillas' survey?

Q. As described in the title papers.

A. There is a question as to where the estancia is.

Q. Wherever you put it according to the title papers would it not be entirely north?

A. It should be so located that that line would not be entirely north.

Q. Can you show me how?

329 A. By taking the centre further down the river than where it has been taken.

By Mr. REYNOLDS: I wish it to be understood that this is not cross-examination, although I have no objection to the gentleman making the witness his own.

By Mr. HENY: I do not offer it as my testimony.

By Mr. REYNOLDS: Then I object to it as not cross-examination.

By the COURT: It is hardly cross-examination, Mr. Heney.

By Mr. HENY: Then I will withdraw the question.

Q. In this report, Mr. Flipper, made by you did not you state in note ten that the line last described deserves attention—meaning the last line run from the initial point of the estancia to the east centre monument of the estancia?

A. As described in this survey of Harris'.

By Mr. REYNOLDS: There is no objection to going into this as examination-in-chief, but it certainly is not cross-examination.

By the COURT: It relates to one of the alleged lines of the grant, and you may proceed, Mr. Heney.

By Mr. REYNOLDS: This witness was not asked by the Government anything about the lines of this grant.

By Mr. HENY: He testified about the monuments of the grant, however.

By Mr. REYNOLDS: And this examination is based on a report which has not been introduced in evidence—the report made by Mr. Flipper to Judge Le Barnes, which was used in evidence by the Government or referred to.

By the COURT: He was examined fully about the monuments. You may proceed.

330 Q. Under the ordinary system of survey in vogue in New Spain do you say that the lands were always surveyed when there was no initial monument given by going to cardinal monuments?

A. Perhaps not always, but that was the rule.

Q. That was the rule, was it?

A. Yes, sir.

Q. Suppose in addition to giving the cardinal monuments five or six monuments were given—two or three extra monuments—then you would not make your perimiter of the grant by joining the points of the two cross-lines that crossed at the initial point regardless of the extra monuments?

A. My, no, sir; because the extra monuments are there in the paper as a guide.

Q. According to the calls in this titulo of 1807 how many leagues of land do you say are called for in the title papers?

By Mr. REYNOLDS: We object. The title papers speak for themselves; and, further, this is not cross-examination.

Objection overruled.

A. The land asked for in the Tumacacori was one square league. The land asked for in the estancia in the first application was two leagues—two sitios (I don't want to use the word leagues)—two square leagues or two sitios. In the subsequent application they asked for the lands that had belonged originally to Calabasas.

Q. Now, each mission was entitled to four square leagues as a farm, wasn't it?

By Mr. REYNOLDS: Objected to as calling for a conclusion of law. Objection sustained.

Q. In examining these title papers, Mr. Flipper, in grants in Mexico

331 which you examined, did any of them purport to be Spanish grants—grants made by Spain?

A. Yes, sir; the larger part of them, I should say.

Q. In your examination of those papers did not you find that the large majority of them were fully as obscure, indefinite, and uncertain as the titulo in evidence here of 1807 in regard to boundaries?

A. I would hardly say a majority, but a large proportion of them were.

Q. In making a survey of any of those grants could you and would you find the monuments by taking the courses and distances as given in the titulo?

A. In some few cases.

Q. A few?

A. Only a few cases. I would like to qualify that answer if I may be allowed.

Q. Certainly.

A. The way the resurvey was made depends upon the purpose of that resurvey. In the surveys I have made in Mexico to determine the amount of demasias instead of monuments it made no difference to the company or to the government where the monuments were if they conflicted with nobody else. I would summon the owner and adjoining owners and the owner would show me his monuments and I would survey the grant according to those monuments. All over what his title called for within those monuments were referred to and reported as demasias. It made no difference whether they were correct monuments or not so long as there was no conflict with anybody else, and if there was a conflict that would have to be determined before we could go on with the survey.

Q. We will come to that.

A. If any of the owners objected to the monuments that question had to be settled by the district court before we were allowed to proceed.

332 Q. Well, in making those surveys your company was to get one-third of all the demasias which were not taken by the claimants of the grant?

A. Yes, sir.

Q. And were they to get any portion of the public lands that were unclaimed?

A. The company got two-thirds of the public lands and one-third of the demasias in private lands. They were authorized in most cases to sell them. They could sell all of the demasias to the owners of the land, but they had to give the government two-thirds of whatever they got for them, and in most of the contracts the price was fixed; or the government could sell direct, and in that case the government had to give the company one-third of what they got.

Q. Did not the grant claimants have a preference right to the demasias?

A. In all cases.

Q. And it did make a difference to the company, and it was to

the interest of the company to have the grant claims as small as possible within these limits, so that there would be more public land?

A. Oh, no; the company could not reduce the quantity of grant lands. We went to the owner of the land and he would show us his monuments. If he wanted to get a small amount of demasias he might have changed his monuments.

Q. Yes; but if the grant was smaller and still included the amount called for in the title papers, but the monuments were put closer together, that made you a certain preference right to all of the lands outside of those monuments, and therefore it was to the advantage of the company to have the monuments closer together than wider apart?

A. I don't see how that question could come in, because the titles themselves show how much land was sold by the government.

Q. And in either case the grant was larger than the amount called for in the title papers?

A. Except one; yes, sir.

333 Q. Wasn't it to the interest of the company to cut down the limits of each of those grants outside of the amount called for in the title papers, so that they would have a certainty of getting the lands in preference to the grant claimants?

A. I could only give an opinion as to that. It seems to me to be impossible for the company or the owner to reduce the amount of land the title covers, because it expressly states.

Q. Who did the surveying for the Sonora Land Company?

A. I did part of it.

Q. You and Mr. Glenn did it all?

A. Yes, sir.

Q. You surveyed the entire district of Arispe?

A. Yes, sir.

Q. How long were you engaged in surveying that district and all of the land included in that district?

A. He had been in there before I came to the company—how long I don't know—and he was there three or four months after I came.

Q. How long were you at it?

A. I say three or four months.

Q. In surveying all of the grants within that district?

A. No; I don't say that. I say after I came there. He had been at work before I came, and a Mr. Cox also.

Q. How long had they worked there?

A. That I don't know. I was in Chihuahua when they commenced.

Q. Do you remember when the concession was made to them?

A. I forget now. It was given to Manuel Valenquela in
334 the city of Mexico, and he transferred it to Sam. Brannan, and he transferred it to the Sonora Land Company. I do not remember when the concession was originally made.

Q. Don't you know about when the Sonora Land Company began their work there?

A. They begun work there some time in 1884 or 1885. I was in Chihuahua at the time.

Q. When did they finish?

A. In 1888.

Q. How much work was done when you took hold of it?

A. That I don't know.

Q. Would not your map show, and your reports?

A. It would not.

Q. You assisted in making the maps of the entire district?

A. I did.

Q. Could not you tell from the notes you have that you assisted in making what proportion of the district had been surveyed before you begun the work?

A. I hav'n't the notes here and it has been so long I don't remember.

Q. At the time the Sonora Land Company begun these surveys another concessionist was also in the field surveying the lands within that district of Arispe, named McMannas Brothers?

A. That concession had been given a number of people.

Q. At the time you begun your work the McMannas were already in the field with their work?

A. Not when I went there; no, sir. I know Mr. Bergen, 335 who was their engineer, had surveyed a part of their district before we went in there.

Q. Did each concessionist have the right to survey in any part of the district he saw fit?

A. No, sir; the concession is before the district judge in Guaymas and excluded all others.

Q. Did you and Mr. Glenn survey lot four in the district of Arispe?

A. I don't know which is lot number four.

Q. (Exhibiting a map.)

A. Both of us worked on that lot.

Q. How long were you in the field in surveying that lot four?

A. I do not recall now.

Q. Had Mr. Glenn commenced the survey of the lot four when you began to assist him?

A. To the best of my recollection he had worked around what is marked Hanoverachi.

Q. How much of that had he surveyed?

A. I can't tell you now.

Q. How many of these grants did you assist in surveying in lot number four?

A. I do not remember now, Mr. Heney.

Q. How long were you in the field?

A. I was in the field three to four months.

Q. Which monuments did you go to in lot four?

A. I do not remember.

Q. Can you name a single grant that you went to in lot four and made an actual survey of from the title papers?

336 A. I do not remember.

Q. By Mr. REYNOLDS: This is objected to unless it is for the purpose of testing the credibility of the witness.

By Mr. HENY: It is done for two purposes: to test the credibility and competency of the witness as an expert of land-grant surveys and in finding monuments and so on.

Q. You cannot state a single grant within the limits of lot four that you went to the monuments of?

A. It has been so long ago that I cannot recollect.

Q. How long ago was it?

A. In the spring of 1885.

Q. Do you know what was done with the demasias and public lands which the company owned a one-third interest within lot 4?

A. The company had no interest in the demasias. There concession did not cover demasias; it only covered public lands.

Q. I understood you the other way.

A. They are not all alike; they are different; some only for a part of a district.

Q. In Sonora, then, it was only public lands?

A. This concession covered only public lands.

Q. Under this concession it was to the interest of the company to have the grants as small as possible?

A. I do not see why it should have been.

337 Q. There would be that much more land to divide between the company and the government.

A. The company had no land within this lot here.

Q. It did have and sold it.

A. It has not sold any land at all, as I understand.

Q. Do you mean that the company under the surveys made by you of that lot acquired no interest in the public lands?

A. They had one-third of the public lands, but the lands they selected was no part of this.

Q. Can you name a single grant in the Arispe that you surveyed by going to the monuments?

A. Yes, sir.

Q. Name one.

A. The Motopori.

Q. When did you survey that?

A. That was surveyed, to the best of my recollection, in April, I think.

Q. April what year?

A. 1886.

Q. Why is your memory any better as to that than it is to any one of these dozen or twenty in lot 4?

A. I do not know, but my recollection is that I remember surveying that one.

Q. Did you go to the monuments of that grant?

A. Yes, sir.

Q. Did you plat it according to the natural monuments that were called for in that?

A. I did, sir.

Q. Didn't you survey the Turicachi?

A. No, sir; Mr. Glenn surveyed that, to the best of my recollection.

Q. (Exhibiting another map.) Do you know what map that is?

338 A. Yes, sir.

Q. What is it?

A. Map of lot 4 so marked.

Q. Can you point out any inaccuracies in that map of lot 4 in the surveys of any of those grants?

A. I cannot at this moment; no, sir.

Q. In making the survey of lot number 4 after you joined Mr. Glenn do you mean to say that each and every one of those grants was surveyed by taking the title papers and going to the monuments called for in the title papers as near as possible?

A. Those that I surveyed were so done; yes, sir.

Q. Were not any of them copied from the field-notes that were filed in the district court?

A. Where subsequent surveys had been made by Mexican engineers and we were shown the monuments and verified the survey we did, but that was in verification—after verification.

Q. What sort of verification?

A. We went into the field and verified the monuments.

Q. Did you find that the monuments compared at all with the courses and distances called for in the title papers?

A. In the revised surveys we did.

Q. When the courses and distances given in the revised surveys, but no others are in the original title papers?

A. Rarely—very, very rarely.

Q. Did you survey the Turacachi?

A. I think I did not.

339 Q. (Referring to report and reading:) "And during that time have examined over two thousand Mexican land titles; among the land titles, that of Turacachi." You recollect that title, do you?

A. Yes, sir.

Q. Did you survey that grant?

A. No, sir; I did not survey. I examined nearly all the titles in that district because Mr. Glenn did not speak Spanish; I examined them and gave him an abstract in English. Part of the time Mr. Glenn had an interpreter with him, but he was not competent to examine these expedientes.

Q. How long did it take you to go to the monuments and verify all of the monuments to the claims within lot 4?

A. I did not say that I verified any of them.

Q. Those that you did, how long were you occupied in lot 4?

A. In our survey in our map we had no lot 4. We did not divide the lots that way, so you are referring to something that I know nothing of.

Q. You cannot tell by examining those maps with the grants, with their names and locations?

A. No, sir; I do not remember now.

Q. The map shown you was made in your office?

A. Yes, sir; in the office.

Q. And it is made as lot 4?

A. No, sir; not in that shape; it wasn't made in our office; we never divided our lots that way.

340 Q. Is it not a copy of a map made in your office?

A. No, sir; it is not.

Q. Is not that a certified copy of the map filed by you or one of them?

A. Here is an exact reproduction of the maps made by us (referring to another map).

Q. I ask you if that is not a certified copy of the map filed by you?

A. No, sir; it is not.

Q. What does it purport to be?

A. It is a copy taken from a map which exists in this department, 7th of November, 1888, by order of department chief of the first section.

Q. And the seal is on it, is it not?

A. Yes, sir.

Q. Did not you file a map similar to that in that office?

A. I never saw a copy of this map until this moment. Here is an exact reproduction of the maps that we made and were filed (referring to printed maps in book).

Q. How many maps did you file?

A. Three maps. Each county was filed separately.

Q. Do you know the Bacanuchi grant on here?

A. Yes; I know it.

Q. Point it out to me.

A. (Witness did so.)

Q. I will mark it with lead-pencil crosses at the corners to identify it. Did you survey that grant?

A. I did not.

Q. Did you assist in surveying it?

A. I did not, except to examine the title.

Q. You had nothing to do with the survey of it?

341 A. Not the actual survey; no, sir.

Q. When you were in the field with Mr. Glenn, did not he persue the same methods in making a survey that you did?

A. Yes, sir; when we worked on a grant.

Q. What he did at other times you do not know, I suppose.

A. Do not know; no, sir.

Q. This is a map that was filed by Mr. Glenn and yourself as engineers, as given in this book, which you both sign as engineers?

A. Yes, sir.

Q. Don't you know as a matter of fact that the Pacanuchi grant has since been surveyed according to the calls of the expediente, and that it takes in a much larger quantity of land that is shown by that map made by you and Mr. Glenn, and that Mrs. Piscara has been put in juridical possession of that excess land?

A. I can't say whether the survey was made according to the calls of the expediente.

Q. Don't you know that she has been put in juridical possession of a much larger quantity under her title papers?

A. I don't know whether she has or not. I have no means of knowing.

Q. Don't you know that when these maps were filed that immediately after filing them there were numerous and strong protests filed with the government against the correctness of the surveys?

342 A. I never heard of such a thing until this moment. I do know that the maps were approved and the company got their patents.

Q. And you do not know that in every instance where a fight has been made by the grant claimant since that the claimant has been put in possession of the land that the claims according to his title papers, in addition to what was allowed him by the maps of your company?

A. I have no means of knowing that, Mr. Heney.

Q. And you don't know anything about that?

A. No, sir.

Q. Do you know the Quitaca grant?

A. Yes, sir; I do.

Q. Did you survey that?

A. I did not, any more than to examine the title papers.

Q. Do you know the Alamo de Savilla grant?

A. Yes, sir.

Q. Did you survey or take any part in surveying it?

A. In examining the papers for Mr. Glenn.

Q. Do you know the Nogales grant?

A. Right near there.

Q. And the Panuelas grant?

A. Yes, sir.

Q. They were owned — Dick Gird and Senator Perkins?

A. Gird, but I don't know about Perkins. In regard to those I would like to say that those gentlemen refused to file their papers with us.

Q. In the original map which you prepared, which included those three grants, did not you plat them as containing a great deal less quantity of land than what the plat now shows?

A. This is the original plat or a copy of it.

343 Q. Have you never platted those three grants otherwise?

— That is a copy of the original (interrupted) —

Q. Hav'n't you filed a map which showed them platted otherwise than as platted there now?

A. Not an official map.

Q. I mean before you filed your map and before it became official.

A. We did not, to the best of my recollection.

Q. Wasn't it only after those gentlemen insisted that they would

fight the grant that you then platted them according to the surveys on here?

A. It was not.

Q. Did you survey them as they are now here?

A. I did not survey them.

Q. Did Mr. Glenn so survey them?

A. Mr. Glenn did not, so far as I know.

Q. Then you and Mr. Glenn did not do all of the surveying in this map?

A. I will tell you. Mr. Gird sent us a map of those three or four tracts of land (interrupted)——

Q. And insisted (interrupted)——

A. He did not insist anything. It was when he was summoned, but he did not insist anything at all. He refused to send us his papers, and Mr. Cross, the manager, wrote from Nogales, and he sent us a sketch, which was turned over to Mr. Glenn.

Q. Then what did you do?

A. I had nothing to do with it after that.

Q. How did that get there on that map?

344 A. It was platted in the office.

Q. From what?

A. Field-notes.

Q. Don't you know that Mr. Gird sent the field-notes which were made by Mr. Bonillas, and that you platted them from his field-notes and from no other data?

A. I just told you that Mr. Gird sent a map.

Q. And field-notes?

A. The courses and distances marked on that map—Mr. Glenn is the man that made the survey of those three or four tracts.

Q. Do you know that Mr. Glenn made the survey?

A. I do not. I know he was in there. Mr. Glenn and Mr. Cox were the two surveyors there in the employ of the company before I came.

Q. And those three are platted according to the map sent to you by Mr. Gird, are they?

A. Yes, sir; they are.

Q. When did you file or attempt to file on this land within the limits of the Calabasas?

A. I do not remember the date exactly, but I can fix it.

Q. Well, about?

A. It was a few days before President Harrison took his seat after the expiration of the first term of President Cleveland. I filed on it by virtue of a decision rendered by Commissioner Stockslager the second or third of March of that year.

Q. Some time prior to that you knew it was claimed as a land grant and had been reserved from public entry?

345 A. I did, and that filing was made by virtue of a decision by Commissioner Stockslager lifting the reservation. Of course, that decision was not final.

Q. The word "tendida" is also used to mean "extended" or "drawn out," is it not?

A. Yes, sir; it is.

Q. And it would be a very proper term to apply to a mesa that was long and narrow?

A. It would.

Q. A mesa "muy tendida" might mean a long, narrow mesa?

A. A very long and narrow mesa; yes, sir.

Q. "Tendida" is also applied to sloping?

A. I never heard it used in that sense.

Q. It is applied to the roof of a house?

A. The proper meaning of the word "tendida" is to "undouble," to "unbend," and if you take that piece of paper (illustrating) and you undouble or unbend it and pass out of the horizontal you are bending it again, which violates the meaning of the word. You look in the Spanish dictionary and you find the word "desplegar," which means to unfold, and if you bend out to the position where it is flat it is tendida—unfolded. That is really the meaning of the word—long, flat.

Q. Do you mean to say by flat that only flat to the horizontal is meant?

A. Yes, sir.

Q. Then you wouldn't call that wall flat?

A. That is verticle—a verticle plain. That land lies flat, but it is not verticle.

346 Q. That is true, that the wall is not lying down, and that is the only sense in which that word would be used according to your idea?

A. Yes, sir.

Q. What does the word "plana" mean?

A. Resembling a plain.

Q. Well, that would be flat, too?

A. No; that might be in any position. A plane can occupy any position; it may be flat or it may be horizontal, verticle, or inclined, or in any position.

Q. Have you ever seen the word flat defined in any dictionary as being horizontal?

A. I don't know as I ever looked for the word.

Q. Did you ever see the word "tendida" in a Spanish and English dictionary with the word flat given to it?

A. I don't remember.

Q. It is not given in this, is it (referring to Velasquez' Dictionary)?

A. (After examining the same.) The adjective "tendido" is not defined in this dictionary.

Q. In speaking of the word as "plane" you mean as a noun?

A. No; I said resembling a plane, which would make the word you asked me about an adjective.

Q. And the adjective "tendida," you say, would be (interrupted)—

A. Resembling a plane. The adjective "tendida" is not defined in this dictionary.

Q. Look at the word "plana."

347 A. (Reading:) "Plane," level, smooth, flat.

Q. If you wanted to speak of a flat or a level mesa spread out, why would not the proper name to be applied to it and the more applicable name be "a muy plana mesa"?

A. I never have seen or heard of that expression. It would be perfectly correct to use it, however. Plana is the adjectiv- in Spanish that means that, but it is not the only word.

Q. And plane is not the only word in the English that means the same, either?

A. For the same reason; no, sir.

Q. Did I understand you to say that when called for in a title paper that you would start from an initial monument and measure one league to each of the four winds; that in obedience to that call you would go only a half a league each way?

A. If the title papers say you measure a league to each wind, of course you would do that, but these papers don't say that.

Q. That is a matter of construction, is it not?

A. It does not say so; it absolutely does not say a single thing.

Q. Where was the start?

A. It does not say.

Q. Doesn't say to start at all?

A. It doesn't say to start at all.

Q. And in that case you would measure only a half a league if you started from a centre?

A. Yes, sir.

Q. If you used an initial point?

A. If you do start from a centre, you measure half a league,
348 because if you measure more than half a league or if you measure a league you would have two leagues to each wind.

Q. (Exhibiting photograph marked "B 5.") That is a photograph which is commonly known as Harris' monument, the south centre of the Guebabi, is it not?

A. Yes, sir; it is.

Q. You stated there was some change in that monument, that some rocks had been moved, as I understand you?

A. No; I say the base of the monument appears to be old and the rock on top appear to have been placed there afterwards. I don't mean to say the monument has been varied.

Q. As to the rocks placed on top, aren't the rocks only immediately surrounding the poles—those shown on the left half side of the photograph, excepting the part to the right-hand side, to the mesquite pole there—in the original condition in which it was?

A. To the best of my recollection, the only new rocks on that monuments are those.

Q. Those to the left?

A. Just the top?

Q. Yes; those to the left-hand side on the top?

A. Yes, sir.

Q. The right-hand side of the monument would be in its original condition, then?

A. Yes, sir; that is what I meant to testify.

Q. You spoke of some old ruins or stones piled up north of Calabasas, up on the mesa?

A. Yes, sir.

Q. Is not that generally known as some old Indian forts?

A. I have no idea what they are.

349 Q. You haven't heard the old settlers talk about it?

A. I don't think they are Indian forts. I have heard that Pisquiera or Gandara during one of the revolutions had sort of a powder factory there, and those were old mortars used for pulverizing the materials.

Q. Did I understand you to say, Mr. Flipper, that the road from Tubac to Crittenden runs up that cañon, as is shown running to the west from the vega of the river near the ruins of Guebabi?

A. The old Government road run up that cañon; left the valley of the river in two different places, one at that cañon and another at the cañon further down the river. There is also a road leaves it at the vado seco.

Q. The regular traveled road or old road is known as the old road from Tubac to Santa Cruz, and the one which runs to Crittenden and which is used by the teams in going to Crittenden—the travelled road—runs along here (indicating on the map)?

A. That I do not know.

Q. And passes by the ruins of Guebabi?

A. That I don't know. I am speaking of the old Government road, which I understood went from old Fort Mason to Fort Crittenden. I don't know as it is used now at all, except in places.

Q. Now, as you take this road up this cañon, how far up the cañon do you go before it turns off on a well-travelled road—an old well-travelled road? This does not appear to be well travelled here (indicating).

350 A. No, sir; it is an old road grown up with grass there.

Q. And when you get up here a ways, how far is it until you strike a well-travelled road?

A. I don't recollect; but three or four miles.

Q. And right where it meets that is the top of a mesa or high ridge of hills?

A. No; up that cañon, before you get up there that far, there is a well-travelled road that turns off to the right. This old road still went on.

Q. And in turning to the right it would carry you away from the direction where the east centre monument is?

A. Oh, a long way this side of it.

Q. But away from it instead of towards it?

A. Speaking of the new-travelled road, yes, sir; away this side of it, and would carry you away from it.

Q. When this well-travelled road reaches the top of a high ridge, where you look down on the Sonoita valley, you leave that road and turn off toward the left and go along a ridge of hills to this monument?

A. Yes, sir.

Q. Have you ever travelled from that monument down to Guebabi?

A. Yes, sir; but not in a direct line.

Q. You never went down that mesa?

A. Not all of it; no, sir.

Q. From where the mesa begins as far as you can see could not a man drive easily with a team of horses and wagon?

A. On that mesa?

351 Q. Yes, sir.

A. Undoubtedly.

Q. Or with a buggy?

A. Yes, sir; he could.

Q. And that would drop into the cañon at the end of that mesa about half or two-thirds of the way down to Guebabi, would it not?

A. It would; yes, sir.

Q. Is it not very easy to drive a team up this cañon and then turn off another cañon that turns to the left and drive clear right straight up to within a quarter of a mile of this monument?

A. Yes, sir.

Q. With a team?

A. Yes, sir.

Q. And you call that very rough country?

A. That is just what I say; that it is not rough.

Q. Didn't you say that the country between this monument and the Benedict ranch was about the roughest in that whole section of country?

A. No, sir; I did not. I said the country from the centre of the estancia. I especially took pains to say that the foot-hills of the Benedict mountain was the roughest part in southern Arizona, and if you will have my testimony read you will see that I said that.

Q. I misunderstood you.

A. The country you have just been talking about going to the east centre monument we drove over ourselves in a carriage.

Q. And after you get up there does not the country become much rougher?

A. Going down it is more precipitous.

352 Q. It would be impossible to go down from that end of the mesa?

A. It would be impossible with a wagon; yes, sir.

Q. And almost impossible with a horse, wouldn't it?

A. Yes, sir; it is precipitous.

Q. And after you get down there the cañon is all broken up?

A. Yes, sir; it is full of gulches, but you can get around down there better than you can come down.

Q. Yes; in traveling around surveying at the end of a day's work, after you have been over a smooth mesa like that, it would look pretty rough down there, wouldn't it?

A. It would; yes, sir.

Q. You speak of an old monument where the trail comes out of the vado seco?

A. Yes, sir.

Q. An old monument there?

A. Yes, sir.

Q. That is the Santa Cruz trail?

A. Going up the river; yes, sir.

Q. Wasn't it the custom where one of those trails went into the water or across a river or any place of that kind where it might be obliterated—wasn't it usual to place a monument of stones or throw some stones together so as to mark the place, so that other travelers should get started across right?

A. I don't know whether it was the custom or not, but I have seen that done in thousands of places—mountain passes and streams.

353 Q. All those sort of places to mark the way?

A. Yes, sir.

Q. And where there is a little trail turning off from a well-defined one?

A. Yes, sir; I have seen any numbers of them.

Q. Did I understand you to say that from the road to Crittenden you could see this east centre monument?

A. No, sir; I said from this hill where I described—peak there—and coming down that ridge I said there was a number of piles of stones, and from that ridge you can see this old road very plainly.

Q. Yes; but it is impossible to see this monument from anywhere along the road?

A. Yes, sir.

Q. And in going to the monument from the road you have to go along a peak of the ridge, and then up a very high hill, and then down into a deep gulch, and then climb hills and mountains up to the top and get onto the end of this mesa?

A. Yes, sir.

Q. And then look down in the gulch and you see this monument with a flag on it?

A. Yes, sir; that is the description.

Redirect examination by Mr. REYNOLDS:

Q. Now, Mr. Flipper, in speaking of the vega del rio, you say that the vega up at the mouth of the potrero is very much better defined and larger than the one down at the ruins of Guebabi?

A. Yes, sir.

Q. How much larger is it?

354 A. Well, that one near the mouth of the potrero must be a mile and a half wide running east and west and probably a mile wide north and south, while the other is considerably less than a mile in width.

Q. In taking the vega for the purpose of establishing the centre monument, if you were going according to this survey, which one of those would you take?

A. In the absence of anything else to guide me I would take the larger vega.

Q. Why would you take that?

A. I would go to the larger one.

Q. Why?

A. I think — fits more nearly the description in the title papers.

Q. Why?

A. The line runs south three hundred and odd cords from the old mission, and at the end of that line the surveyor called on the Indians to tell him where they wanted the estancia surveyed, and they said they wanted the mouth of the potrero included in the estancia, and I think if the south line had run beyond that point, or rather I think that request shows that that line of three hundred and odd cords did not get down as far as the potrero.

Q. Is there any other reason with reference to the Guababi? Do the papers also state that they wanted included in the estancia the Guebabi?

A. Yes, sir; and the mouth of the potrero.

Q. Now, in fixing the vega or cienega at which you would establish the centre monument, is there anything in the title papers that would carry you down to the ruins of Guebabi any more than would carry you to the other?

355 A. Nothing. A. No, sir.

Q. Then you would take the largest and most well defined vega with which to make that location?

A. I would if the survey starting from that point would include the Guebabi as this would do.

Q. This report about which counsel has interrogated you which you made to Judge Le Barnes, I will get you to state whether or not at the time you made that report you had made any reconnoissance of this grant with a view to defining the topography.

A. I had been down to the Tumacacori mission only.

Q. Was this report based upon Harris' map and from nothing else?

A. Entirely; it was criticism of Harris' survey — than anything else.

Q. Since that time, in behalf of the government, have you been over it more carefully?

A. A number of times, and studied it very carefully.

Q. And have translated and examined the title papers with a great deal of care and pains?

A. I have.

Recross-examination by Mr. HENNEY:

Q. Wasn't this gotten up for the purpose of defeating this grant? Wasn't Judge Le Barnes employed by the squatters on the grant, and was not the object and purpose of the report to show how the grant could be defeated?

356 A. At that time the settlers on the grant had employed a lawyer in Washington, I think Le Barnes, to see if he could get the reservation lifted off this grant, and it was made for that purpose.

Q. And in this report to Judge Le Barnes did not you give it as your opinion to him that the grant of 1807 was genuine, and the only way you could defeat this grant claim was by showing indefiniteness in the boundaries?

A. I have no doubt in the world now that the title of 1807 was genuine.

Q. And wasn't that the language of this report—making the *the* boundaries indefinite?

A. I believe they are indefinite yet.

Q. Wasn't that what you said in this report?

A. I haven't read it since 1890, but if I said it then I say it now.

Q. (I will read a portion of it :) "It will be difficult to establish the fraudulent character of this transfer, and it will be necessary to depend on the indefiniteness of the description of the survey and the consequent impossibility of locating the grant on the earth's surface."

A. I undoubtedly said that then and I say it now.

Q. And didn't you further say in your report, "I am of the opinion that the title is genuine notwithstanding it is obscure, indefinite, and defective, and I arrive at this conclusion the more readily because I know that all or nearly all of the titles issued by the Spanish authorities which I have examined are equally obscure, indefinite, and defective"?

A. I endorse that same thing now. The title of 1807 is
357 undoubtedly genuine.

Q. If you start from the point which is stated as the vega near Calabasas and take the number of cords called for in the title papers, wouldn't — carry you far beyond the ruins of Old Calabasas into the Tumacacori grant?

A. That depends upon where you locate the Tumacacori grant. I would not if I located it.

Q. Not if you located it on one side, no; but if you took in all of the agricultural lands of Tumacacori and if you located your south monument at that gulch—isn't there a gulch adjacent to the old ruins of Old Calabasas?

A. Yes, sir; there is.

Q. Only about one hundred yards distant?

A. Not so far.

Q. About fifty yards, I guess.

A. Yes, sir.

Q. If you located your monument on the upper side of that it would answer the description called for in the title papers, wouldn't it?

A. No, sir; not in my opinion.

Q. Would it not be on the upper side of a gulch?

A. The title doesn't say anything about the upper side of the gulch.

Q. Wasn't that the translation which you gave?

A. It doesn't say anything about the upper side of a gulch.

Q. What does it say?

A. It says adjoining a gulch or to a gulch.

Q. Doesn't your translation read so?

A. (Reading:) "It ended on the upper side, adjoining the cañon near the place called Calabasas."

358 Q. Now, there is a cañon near the place called Calabasas?

A. There is.

Q. The mouth of it empties into the cañon?

A. Yes, sir. I say that does not mean the side of the cañon. It means the side of something else. It means, as I understand it, the upper boundary, or up-river boundary, of the Tumacacori grant.

Q. They are fixing the monument of the grant, aren't they?

A. They say that running three hundred cords ends in the upper side of the Tumacacori grant.

Q. Now, they are attempting to fix the upper side of the Tumacacori grant, and they tell you it ends just where they are trying to fix the place?

A. And they fix it by measuring three hundred-odd cords.

Q. And if I ask you where the end of the room is you will answer me by saying, Why, at the end of the room?

A. No; I say it is three hundred and thirty-odd cords from the Tumacacori church up the river.

Q. This reads, "which ended on the upper side, adjoining the gulch near the place called Calabasas."

A. But it does not say the upper side of the gulch.

Q. And you think it means the upper side of the grant?

A. I do; yes, sir.

Q. Then it would read, "which ended on the upper side of the grant, adjoining the gulch near the place called Calabasas"? Now, accept that as your interpretation of it.

A. All right.

359 Q. That would bring us to the same point, wouldn't it?

A. No, sir; another question arises, What is meant by "place"?

Q. What is the Spanish?

A. "Sitio de Calabasas." It doesn't say a word about the ruins.

Q. You translate it as "place called Calabasas?"

A. "Sitio" is a translation of the word "place."

Q. The place which was then called Calabasas is a well-known place today, isn't it?

A. I don't know that that is the old place called Calabasas. I have no information that makes me know that that is the Old Calabasas that was there in 1807.

Q. You didn't raise any question about it in your report, did you?

A. I was reporting on Mr. Harris' survey.

Q. I say, you didn't raise any question about that?

A. I did not.

Q. You made notes all through your report where you thought anything (interrupted)——

A. Anything that occurred to me at the time. I will tell you what I understand it to mean—the words "sitio de Calabasas." Calabasas was a mission at one time, and, under law 8, title 3, Book

6, the missions were entitled to one square league of land, and that means that the 330 cords, or whatever the exact distance is, came up there and ended at a cañon near this tract of land, this tract of land being called Calabasas. The ruins of Calabasas are not mentioned in that document anywhere—in no place.

360 Q. It would read, then, "which ended on the upper side of the Tumacacori grant, adjoining the cañon"?

A. Which cañon?

Q. "Near the grant of Calabasas."

A. That is my understanding of it.

Q. Instead of "adjoining the cañon near the grant of Calabasas," don't you know that the title papers state that Calabasas was included in this estancia?

A. They asked for it to be included and it would be included in that interpretation; that whole league would be included.

Q. Where would the cañon be?

A. There are a number of cañons.

Q. Between the Calabasas and the southern end of the Tumacacori grant?

A. That paper says that the end line of the Tumacacori grant would be near the cañon. It don't say how far or how close, and there are a number of cañons on the south side.

Q. What would you call a cañon near the end of the grant?

A. Near the lines of that grant? In this case it was that side of the grant in the direction from which they were going.

Q. Then it would state within the Calabasas grant, wouldn't it?

A. Not necessarily.

Q. Or lies between the end of the Calabasas grant on the north and the south end of the Tumacacori grant?

A. Not necessarily.

361 Q. It would not be near the grant unless it was outside of the lines of the grant?

A. It could be outside and be near it.

Q. It would have to be outside, wouldn't it?

A. Yes, sir.

Q. Now, if it was outside of it, it certainly would not be inside of the Tumacacori?

A. The line might run at the cañon.

Q. The cañon would not be inside of the Tumacacori according to this description?

A. Yes, sir; inside one or the other, because the paper says the two tracts of land are close together.

Q. If it is inside and you run to the upper side and you would be near the lands of the Calabasas, then there would be vacant land between the upper side of that cañon and the Calabasas?

A. Admit that there was.

Q. Is there anything to indicate that there was any vacant land between the Calabasas and Tumacacori?

A. This is referring to that one league which the Old Calabasas mission formerly owned.

Q. Wasn't the Calabasas mission a mere dependency of the Tumacacori mission and adjoining on it?

A. It was.

Q. Then there was no vacant land between them?

A. That does not follow; no, sir. This San Javier mission down here had outlying missions that were dependent on it which were at some distance from it. I don't know whether that was absolutely so or not, but I know there are cases where missions are dependent on other missions that have not been adjoining and it — not necessary that they should.

362 Q. Did not you say in your report that there were four square leagues that the Calabasas would be entitled to and the two sitios or such additional land as the intendente agreed to give it, and that the Tumacacori would be entitled to four square leagues and such additional land for an estancia as was agreed to be given it, and that the Guebabi consisted of four square leagues and such other land as might be given it; and will you tell me how you get all those various leagues of land inside of these landmarks called for from north to south, taking in the Yerba Buena, and still have any vacant land between Calabasas and Tumacacori?

A. I do not say that it is necessary to have any vacant land between the two.

Q. Then that cañon would either be a dividing line between them or there must be some vacant land between them, must there not?

A. We are talking about the Calabasas tract of land as it was original- granted and not as surveyed in 1807.

(One page of the stenographer's report of the proceedings at this point was lost, but the examination of this witness was concluded. The defendant- rested. The petitioner- then called as a witness in rebuttal IGNACIO BONILLAS & his examination follows:)

363 By Mr. HENEY: So that your honors may rule on the objection intelligently, I will state that the grant referred to is platted on this map; that it was surveyed by Mr. Bonillas, and that he accompanied the district judge in placing Mrs. Pisquera in possession of the land as surveyed by him, giving her juridical possession, and that it takes in a much larger quantity of land than is called for on this map, and then propose to show, generally, that in nearly every instance complaints were made of these surveys by the interested parties.

It goes to the manner of surveying these grants as to whether you should go to the landmarks called for or whether this is the proper plan.

Objection sustained. Exception by petitioner-.

Q. (Exhibiting another map.) What is that map?

A. That is a map of lot No. 4, situated in the district of Arispe, State of Sonora, Mexico.

Q. Did you survey that lot No. 4, all the land claims within it?

A. I did.

Q. How long did it take you to survey it?

A. Took me about a year to make a complete survey of it.

Objected to as before.

By Mr. HENEY: It is offered to attack the credibility of the expert as showing how expert he is as doing work in 4 months over an entire district that took this witness a whole year.

Q. How many assistants did you have, Mr. Bonillas?

364 A. I had 8 assistants.

Objected to. Objection sustained.

Q. Do you know the ruins up on the hill from the potrero near Calabasas that were spoken of by Mr. Flipper, north of that meadow?

A. Of the large meadow?

Q. Yes, sir; near Calabasas.

A. I know of ruins that are about northeast.

Q. On the north side of the Peck cañon?

A. No, sir; I don't think I do. I camped there at the mouth of Peck cañon, but I never noticed those ruins there.

Q. (Exhibiting map.)

A. I camped right at the mouth of Peck cañon here (indicating), but I didn't notice any ruins there myself.

By Mr. HENEY: That is all, then.

By Mr. REYNOLDS: No cross-examination.

If your honors please, I have a certified copy of an affidavit that I want to offer provisionally. The original is on file with the Commissioner of the General Land Office, July, 1889. It is taken before a notary public at Nogales.

By Mr. HENEY: We shall object to it as incompetent and immaterial.

By Mr. REYNOLDS: On procuring the original I wish to substitute it for this copy.

365 By Mr. HENEY: The act provides that testimony taken before the surveyor general where the party is dead may be produced in this court, and shall be here accepted in so far as it is competent, relevant, and material, but *ex parte* affidavits, where the opposite party had no opportunity to cross-examine, never *has* been considered proper or competent, and as a matter of course *is* not competent.

By Mr. REYNOLDS: I will prove his death and save my point.

H. O. FLIPPER, recalled on behalf of the United States, testified:

By Mr. REYNOLDS:

Q. Did you know Mr. Escalante?

A. I did, personally.

Q. Is he alive or dead?

A. He is dead; he died in Guaymas; I was there when he died.

COLIN CAMERON recalled in rebuttal on behalf of petitioners.

Direct examination :

By Mr. HENY.

Q. On the mesas in this country what is your knowledge as to stones being exposed slightly above the ground and the cause of it?

A. Those piles of stones just lay together that Mr. Flipper testified about?

Q. Yes, sir.

A. The whole mesa country in southern Arizona is covered
366 with them, not only one or a hundred, but thousands of them, and I don't believe there were ever Indians enough in the whole country to put them there with human hands, as he says, unless they are very different Indians from those we know. They come to the surface by the action of rain for the many thousands of years the mesas have been there. Some places they are bigger and some places smaller. If the mesa is flat, they are exposed just a little, and if more sloping the ground is washed away more, and more of the stones is exposed, but I never regarded them as monuments at all. They are just natural things that occur on the earth's surface.

Q. In going up that ridge and mesa back of the west centre monument—you have been there?

A. Yes, sir.

Q. What are those monuments, as called by Mr. Flipper, as you found them there?

A. There may be one other monument or pile there, but only one.

Q. And the balance, what are they?

A. Just natural.

Q. What sort of a place is it?

A. A long, sloping, drawn-out mesa. In many years the dirt has washed away, and if you will go to the foot-hills where the ravines come out you will see where the dirt has gone to that was washed down.

Q. How is it as to rocks?

A. A good many rocks there, but there is no monuments piled up. As I said before, you can ride over the whole hill on a gallop.

367 Cross-examination.

By Mr. REYNOLDS:

Q. You say the piles look like the result of the action of time and rain, which has washed away the dirt from them and left them exposed?

A. They just lay there.

Q. And look as if the material was washed away from them, exposing them more or less all the time?

A. That is the way I account for them.

Q. How do you account for other monuments being covered up?

A. Because they are put there as obstacles; just like trees, you find dirt and grass piled around the bottom of some.

Q. Now, you take a high monument—4 or 5 feet high—down which the water runs to its base, washing away from its base the dirt, and you say the tendency has been to cover them up, whereas ordinary stones imbedded in the ground are being exposed by the elements?

A. Yes, sir. Take the west centre one of this estancia; it is on the slope where the hill levels a little bit, and the photographs will show you that the debris come down off the hill and has washed away from some of the natural piles of stones, and if you go there anybody can tell that this particular pile of stones was put there and the others were not.

Q. I am talking about the ones on the mesa without any wash.

A. You can tell the ones that nature put there and the ones that man put there.

368 Q. Some are put there that you haven't taken for monuments, aren't there?

A. Do you mean that there are some there that aren't the monuments of this grant?

Q. No, sir; that you haven't taken to be monuments of any grants in this country.

A. I don't understand.

Q. Are there not plenty of piles of stones in that country that you have not taken in your reconnoitering as monuments of land grants?

A. Yes, sir; didn't consider them monuments.

YGNACIO BONILLAS, recalled by petitioners in rebuttal, testified as follows:

Direct examination.

By Mr. HENEY:

Q. What do you understand when a paper calls for a measurement of one league to each wind?

A. That you are to start from one point and run along the four cardinal points a league towards each wind of the cardinal points.

Q. How many leagues would that make within the perimeter?

A. That would make four square leagues.

Q. Did you ever find any title papers of any grant where it would only mean one league, or starting at a corner and run around and close it and call that a league to each wind?

A. No, sir; the practice and the rules have been to start from a centre point, especially in these town lands where they generally started from the door of the church and run a league to each wind.

369 Q. Without any place being named were they not required to start from the church door?

A. I think they were. I think there was a provision to that effect.

Cross-examination.

By Mr. REYNOLDS:

Q. Now, if you run that way and make your perimeter, won't you have two leagues to each wind?

A. No, sir; you will have only one league from the starting point.

Q. Won't you have a line east and west two leagues long?

A. The outside of the perimeter would be, but not from the centre you wouldn't, which is the manner really of surveying a square.

Q. Without mentioning any centre, but marking it as a lineal league, so as to run a league to each wind, you say you would run a centre league east, west, north, and south?

A. That would not be surveying a sitio.

Q. How would you survey a sitio, then?

A. I would start from a centre in accordance with the rules at the time and run half a league to the north, half to the south, half to the east, and half to the west.

Q. Then square it?

A. Then I would have half a league towards each wind.

370 Q. From the centre?

A. Yes, sir.

Q. And as a perimeter a league to each wind?

A. A square league; yes, sir.

Q. And the perimeter would be a league to each wind?

A. A league to each wind? I do not understand what you mean at all. It is the first time I ever met with such construction as that. To each wind—if you start from a corner and come to that point there, of course you would have a league to each wind from that corner; yes; but if you measure a league to each wind from one starting point you would not. (Witness paused.)

By Mr. HENEY: With the exception of the toma de razon of the Nogales grant, we close our case.

By Mr. REYNOLDS: We have nothing further.

Argument followed.

Submitted; taken under advisement.

371

Certificate.

I hereby certify that the above and foregoing three hundred and thirty-four pages contain a full, true, and correct transcript of the proceedings had and oral evidence, except as stated on page 324 hereof, offered upon the trial of the case entitled William Faxon, Jr., *versus* The United States, involving the property claimed under the Calabasas, Guebabi, and Tumacacori land grant, situated within the Territory of Arizona, the trial of which was begun on the 25th day of March, A. D. 1895, at Tucson, in said Territory.

LUCIAN F. PARKE, JR.,

Official Stenographer Court of Private Land Claims.

May 22, 1895.

372

(EXHIBIT 1.)

Consulate of the United States of America at Guaymas, Mexico.

MARCH 22, 1895.

I, Charles E. Hale, vice-consul of the United States of America at Guaymas, Mexico, do hereby certify that the signature of V. Aguilar at the foot of the verifications of the following two certificates hereunto attached is true and genuine; the same he uses in all his official business; that the said V. Aguilar is state treasurer of this State of Sonora and is personally known to me.

In witness whereof I have hereunto set my hand and affixed this seal of this consulate, at Guaymas, Mexico, the day and year first above written.

[SEAL.]

(Signed)

CHAS. E. HALE,

U. S. Vice-Consul.

373 Two fifty-cent stamps, properly cancelled.

A seal which reads: Mexican Republic, general treasury of the State of Sonora.

Victor Aguilar, general treasurer of the State of Sonora, Republic of Mexico.

I hereby certify that in the archives of this treasury corresponding to the year 1857 there is a communication of the following tenor:

"A seal which reads: Mexican Republic, government of the State of Sonora.

Don Francisco Gandara having withdrawn since the month of May last the bond which he had given in favor of the contador (2nd officer in charge) of that treasury, Don Manuel Arvizu, which circumstance has caused the chief officer of the federal treasury in the State to request in a communication dated yesterday that a visit of inspection to said office be made covering the time which the contador has occupied said office without the legal requirements for the purpose of ascertaining the proper management of the general revenues as well as of those appropriated for the expenses of the State, this government, considering said request proper, has decided to appoint Mr. Jose Toribio Gutierrez, who possesses all the necessary requirements, so that he may make the inspection for the period beginning from the day when the treasurer, Don Antonio Morales, was called to take charge of the American custom-house. With this understanding your honor will please place at the disposal of said Senior Gutierrez the funds on hand, books, vouchers, and the archives, so that he may fulfill without any obstacles all the duties of his commission, causing him to be recognized by the subordinate employes in the character of special inspector of the office.

God and liberty.

Hermosillo, January 15, 1857.

(Signed)

Y. PESQUERIA. [RUBRICA.]

To the treasurer of the State, Ures."

374 In testimony whereof I extend the present, in the city of Hermosillo, capital of the State of Sonora, on the 19th day of March, 1895.

(Signed)

V. AGUILAR. [RUBRICA.]

Filed in the office of the clerk court of private land claims March 25, 1895.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

375

(Ex. 2.)

Two fifty-cent stamps, properly cancelled.

A seal which reads: Mexican Republic, general treasury of the State of Sonora.

Victor Aguilar, general treasurer of the State of Sonora, Republic of Mexico.

I hereby certify that in the archives of this treasury corresponding to the year 1857 there is found a communication of the following tenor:

"Inspection of the general treasury of the State.

The commissioner of inspection being fully satisfied by the investigations already made in the fulfillment of his commission that you have in a high degree become responsible in the distribution of the public funds, as you will see fully proved in the statement of charges which in due time I will send you, I have deemed it my duty to suspend you in the exercise of your functions as chief of the office which you hold, placing in charge of it temporarily the first officer, Don Eufemia Tapia, under my supervision, while the superior authorities to whom I give an account of this act resolve whatever be convenient. In consequence thereof you will proceed to turn over the said office by formal inventory on the very moment when you receive this communication to said officer, which operation as well as the extra statement of accounts which may be made to receive the cash balance which may result and which shall be audited by the judge of the first instance and the prefect to whom for such purpose I address a communication.

God and liberty.

Ures, February 4, 1857.

T. GUTIRERRES. [RUBRICA.]

To the contador of the general treasury of the State, Don Manuel Arvizu, *president*."

In testimony whereof I extend the present, in the city of Hermosillo, capital of the State of Sonora, on the 19th day of March, 1895.

376 (Signed)

V. AGUILAR. [RUBRICA.]

Endorsed: Filed March 25, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

377

(Ex. 3.)

A seal which reads: Inspector of the treasury general of the State of Sonora, under date of the 1st instant.

His excellency the governor of the State communicates to me the following: "Your communication of February 27 last has been received, in which you transmit your account of expenses incurred by your inspection of the treasury of the State during the time that Don Manuel Arvizu had charge of that office as contador (second officer in charge—book-keeper), said gentleman now being suspended. Together with the said account there was received a package containing the vouchers of said account. The government, in view of the defense that may be made by the responsible party (Don Manuel Arvizu), will make use of its powers so that in accordance with law Don Manuel will be called to account for the liability he has incurred through his mismanagement. Returning you thanks for the faithful and prompt discharge of your duties." All of which I communicate to you for your knowledge, and advise you from this date my connection with the office under your worthy charge ceases, as I have to occupy myself with the affairs with the office of attorney of the superior court of justice, with which position my superiors have honored me. Please communicate this in writing to the subordinate employés of that superior office for their knowledge. I repeat my assurances of the highest regard.

God and liberty.

Ures, March 7, 1857.

(Signed)

TORIBIO GUTIERREZ. [RUBRICA.]

To the provisional treasurer, Don Eufemio Tapia, present.

This is an exact copy of the original which exists in the archives under my charge.

Filed Mar. 25, 1895.

JAS. H. REEDER, *Clerk*,

By R. L. LONG, *Dep.*

378

Ex. 4.

A stamp which says: Treasury general of the State of Sonora.

MOST EXCELLENT SIR: At this very moment at which Mr. Toribio Gutierrez has presented himself to me as inspector of this office, appointed by your excellency, and in punctual compliance with your superior order of the 15th instant relating thereto, I have received him and allowed my subordinate employés to be examined by said commissioned inspector, immediately placing at his disposition the funds on hand, books, vouchers, and the archives and to enable him to carry out all the purposes of his said commission without any obstacle. As I have the honor to communicate it to your excellency in due reply to your said superior order, I sincerely and respectfully state to you that my responsibility in this office

has been and is still secured by bonds in the terms of the law, inas-much as Mr. Francisco Gandara freely and spontaneously became my surety in the sum of the two thousand dollars the law designates and for all the time I may fill my office, and if, indeed, said individual has applied to withdraw his said security it is not within his power to bring it to an end at once, but, on the contrary, it should remain in all its force and vigor until he is replaced by another surety equally fit and creditable under the law. I also state to your excellency that if this substitution of bond has not been made it has not been from neglect, but because his excellency the governor, Jose Aguilar, was willing for it to be delayed until the critical circumstances that have followed the revolution that broke out in this State shall have quieted down.

Your excellency will deign to accept my constant respect and sincere esteem.

God, &c.

Ures, January 21st, 1857.

379 His excellency the governor of the State.

This is an exact copy of the original that exists in the archives under my charge.

BME. ROCHIN. [RUBRIC.]

Filed in the office of the clerk court of private land claims March 25, 1895.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

380

Ex. 5.

A stamp which says: Treasury general of the State of Sonora.

To his excellency the governor and commandant general of the State I state the following under date of today: "At this very moment at which Mr. Jose Toribio Gutierrez has presented himself to me, &c." And as I have the honor to communicate it to your excellency for your superior information, I renew to you the securities of my respect and esteem.

God, &c.

Ures, January 21st, 1857.

Superior chief of the treasury of this State.

And I have the honor to communicate it to your excellency for your information, protesting to you my most attentive considerations and distinguished esteem.

God, &c.

Ures, January 21st, 1857.

Mr. Toribio Gutierrez, inspector of this treasury general, present.

This is an exact copy of the original that exists in the archives that are under my charge.

BME. ROCHIN. [RUBRIC.]

Filed in the office of the clerk court of private land claims
March 25, 1895.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

381

EXH. 6.

A stamp which says: Republic of Mexico, government of the
State of Sonora.

Your honor will please prepare a statement of what is due Mr.
Toribio Gutierrez, as special inspector of that treasury, from the 21st
of January to the 7th instant, on which day he concluded his in-
spection, at one hundred dollars per month, and when made your
honor can order the payment of his accounts, as the circumstances
of the treasury may allow.

God and liberty.

Ures, March 21st, 1857.

Y. PESQUEIRA. [RUBRIC.]

To the treasurer general of the State, present.

This is an exact copy of the original that exists in the archives
which are under my charge.

BME. ROCHIN. [RUBRIC.]

Filed in the office of the clerk court of private land claims Mar.
25, 1895.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

382

EXHIBIT 7.

[Two Mexican stamps canceled.]

[Seal Republica Mexicana, Tesoreria General del Estado de Sonora.]

Victor Aguilar, Tesorero General del Estado de Sonora, República
de México.

Certifico: que los documentos fotografiados y que ván marcados
con los números del 1 al 4 concernientes á los expedientes de Tuma-
cácori, Calabazas, Cocóspera y Arivac, son copias exactas de los
originales que existen en el archivo de esta Tesoreria General.

Yá pedimento del Sr. Colin Cameron, extendiendo el presente en la
ciudad de Hermosillo, á los veinte y cuatro dias del mes de Abril de
mil ochocientos noventa y cuatro.

V. AGUILAR.

(Here follow photographs marked pp. 383 to 386, incl.)

387

(Translations of Exhibit 7.)

Two fifty-cent stamps duly canceled.

A seal which reads: "Republica Mexicana, Tesoreria General del Estado de Sonora."

Victor Aguilar, general treasurer of the State of Sonora, Republic of Mexico.

I certify that the photographs of the documents marked from 1 to 4 concerning the expedientes of Tumacacori, Calabasas, Cocospera, and Arivac are true copies of the original documents which exist in the archives of this general treasury.

And at the request of Mr. Colin Cameron I herewith issue these presents, in the city of Hermosillo, on the 24th day of April, 1894.

(Signed)

V. AGUILAR. [RUBRICA.]

(1.)

Republica Mexicana, Tesoreria General del Estado.

In order to conclude a report which his excellency the governor asks from this office, it is necessary to have before me the expedientes of the ranches of Tumacacori, Calabasas, Cocospera, and San Pedro de Arivaca, and which documents I hope you will favor me with, to be returned to you; this to be your receipt for them.

God and liberty.

Ures, Feb'y 8, 1857.

(Signed)

TORIBIO GUTIERREZ.

[RUBRICA.]

(Signed)

EUFEMIO TAPIA.

[RUBRICA.]

To the contador of the departmental treasury in liquidation, Don Jose Maria Arvizu, present.

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(2.)

Extinct State treasury of the department for the settlement of accounts.

I have the honor of remitting to you, as per your request of the 8th instant, and for the purpose of concluding a report which his excellency the governor of State asks of you for expedientes of the measurements of the ranches La Casita, Calabasas, Tumacacori, and San Pedro de Arivaca, not doing the same with that of Cocospera on account of having found in the archives of this office only the evidence of title in due form issued in favor of the natives of said place, as can be deduced from copy which I transmit herewith to you, which evidence was found in a book of Toma de Razon of land which, in 1833, was kept by the treasurer general of the State.

God, &c.

Ures, February 10, 1857.

To the treasurer general of the State, present.

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(3.)

Late departmental treasury in liquidation of accounts, 1833.

On the 14th day of August titl- of grant of four sitios of land was issued in favor of the natives of Cocospera and Dolores, comprised in both above-named towns, in equal parts.

(Signed)

MILLA. [RUBRICA.]

Copy.

Ures, February 10, '57.

(4.)

Don Toribio takes with him the following expedientes for which Don Eufemio Tapia must give receipt: Casita, Tumacacori, and Calabasas, Calabasas, Tumacacori, Arivac.

Filed in the office of the clerk court of private claims March 25, 1895.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

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OFFICE OF SURVEYOR GENERAL,
TUCSON, ARIZONA, *December 30th*, 1893.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,
U. S. Surveyor General, District of Arizona.

(EXHIBIT 8.)

ARISPE, AÑO DE 1807.

Titulo

De adjudicacion, mrd. y confirmacion en forma de las tierras q. corresponden á los Naturales de Tumacácori, pr. razon de Fundo legal de su Pueblo y Estancias pa. el mismo.

Librado.

Á favor de los propios Yndios su comunidad y Republica, por el Juscado Privativo de trras. de la Yntenda. y Govo. de estas Prova. de Sonora y Sinaloa.

391 Veinte y quatro reales. Sello Primero, Veinte Y
[SEAL.] Quatro Años Reales, De Mil Setecientos Novent A Y Seis,
Y Noventa A Y Siete.

Seis Pesos (Seal).	Don Alexo Garcia Conde, Brigadier de los Reales Exercitos Yntendente de Provincia y Real Hazienda, Governador, Politico y Militar y Jues Privativo de Medidas, Ventas composiciones y Repartimiento de Tierras de las Provincias de Sonora y Sinaloa por su Magested. (L. D. G.) &a.
Seis Pesos (Seal).	

Por quanto el Rey Nuestro Senor por el Artículo 81, de la Real Ordenancia é Ynstruccion de Yntendentes expedida en Madrid á 4 Diciembre de 1786 se ha dignado mandar agregar al conocimiento y Jurisdiccion de esta Magistrado Juscado Privativo de Medidas ven—y composiciones de Tierras de Sus respectivas Provincias, segun se previene en el mismo articulo, cuyo tenor es el siguiente.

Arto. 81. Tambien seran los Yntendentes Jueces Privativos de las dependencias y causas que ocurrieren en el Distrito de sus Provincias sobre Ventas, composiciones y Repartimientos de Tierras Realengas y de señorio, deviendo los poseedores, y los que pretendan nuevas concesiones de ellas, deducir sus derechos, y formar sus solicitudes ante los mismos Yntendentes para que, instruidos legitimamente esto negocios con un promotor de mi Real Fisco que nombren, los determinen, segun derecho, con Dictamen de sus Asesores ordinarios, y admitan las apelaciones ála Junta Superior de Hazienda, ó la den cuenta, en defecto de interponer recurso los interesados, con los Autos originales quando los estimen en

302 estado de despachar el titulo, á fin de que, vistos por ella, selos devuelva, ó bien para que le expidan sino se la ofreciere reparo, ó para que, antes de ejecutarlo, evacuen las diligencias que echare menos la Junta y les previndese mediante lo qual podran recaer sin nuevos embararos las confirmaciones correspondientes que librara á su devido tiempo la misma Junta Superior, procediendo esta en la asunto, como tambien los Yntendentes, sus

subdelegados y demas con arreglo á lo dispuesto en la Real Ynstruccion de 15 de Octubre de 1754, en quanto no se oponga á lo resuelto por esta, sin perder de vista las saludables disposiciones de las Leyes que en ella se citan, y de la 9. Titulo 12, Libro 4.

En su consecuencia y haviendose promovido y solicitado en esta Yntendencia y Juscgado Privativo de Tierras por Parte del Comun de Naturales del Pueblo de Tumácacori, sito en Distrito de la Pimeria Alta, el señalamiento y adjudicacion de las Tierras que les corresponden asi por razon de Fundo Legal de su propio Pueblo, como para estancia ó Rancho del mismo, conforme á las Reales y Superiores disposiciones que tratan dela materia, se ha instruido sobre ello el expediente que corresponde, y cuyo tenor á la letra es de la manera y forma que sigue.

Escrito.

Sor. Gobernador Yntendente Jues Privativo de Tierras, Juan Legarra Gobernador de los Yndios del Pueblo de Tumacacori, sito en Distrito de la Pimeria Alta :

Felipe Mendosa, Jose Ygnacio Arriola Ramon Panplona Xavier Ygnacio Medina Principales Naturales del mismo Pueblo y actualmente hallados en esta Capital, por si á nombre y en representacion

393 de todo el comun de Naturales de aquella Republica ante la superioridad de V. S. conla Mayor sumision y por el ocurso mas legal en dró. parecemo y decimos: Que careciendo el indicado nuestro Pueblo de las Tierras necesarias que la corresponden assi por razon de Fundo legal como pa. estancia, con respecto á q. por haberse totalmente perdido los priinitivos Ynstrumentos relativos á su antigua consignacion de terrenos se Ignora enteramente los terminos en q. esta le fuè echa en aquel tiempo, y de consiguiènte sus legitimas verdaderas pertenencias y Linderos, nos hallamos enla precisa y urgente necesidad de solicitar el devido formal senalamiento de unas y otros con puntual arreglo á las disposiciones de S. M. y de la Superioridad q. rigen sobre la materia y en su consecuencia ocurrimos ála notoria justificacion da V. S. suplicandole rendidamente se sirva dictar la providencia y Comision bastante q. corresponda á efecto de q. desde luego y conforme al mandado gral. y expresante. por aquellas soberanos y Superiores resoluciones se proceda al indicado Repartimento y consignacion de las tierras q. por ambos respectos nos deven ser concedidas y adjudicados vajo el concepto de q. las quatro Leguas (una por cada viento) q. por razon de Fundo del Pueblo se nos hande demarcar deveran precisamente darsenos y medirsenos con proporcionada y equitiva extencion y limitacion por los rumbus que mejor nos acomode atoda nuestra discrecion y voluntad, con el justo y prudente fin de comprehender en el senalamiento respectivo de las mismas quatro Leguas el Terreno mas util para nuestras siembras: y enla inteligencia tamb. de q. por lo respectivo ála consignacion que deva hacersenos de Sitios para Estancia hade comprehenderse el Puesto de Guevavi y sus pertenencias asi por q. este Terreno es mas

aproposito y q. mejor nos acomada para mantener en el
 394 los Ganados de Nuestra indicada Mision de Tumacacori y
 lograr alli la conservacion y Mayores posibles aumentos de
 estos semovientes van incrementandose considerablemente como
 principalmente por reconocerse con toda legitimidad de Dro. y
 propiedad por del á misma Mision el citado Guevavi, como Pueblo
 Cavesera q. fue de ella y ser yo el actual Governador uno delos hijos
 nacido en el propio antiguo Pueblo de Guevavi; como igualmente
 pedimos sea tambien comprehendido al los enunciados Sitios del
 Puesto ó parage nombrado la Boca del Potrero, por sernos assi util
 para el efecto y hallarse muy inmediato á nuestra Mision segñ. q.
 en los terminos especificados en esta nuestra reberente formal In-
 stancia lo exigimos de la constante rectitud y verficencia de V. S.
 por ceder en justo alivio y fomento del Comun de Naturales de
 nuestra Republica y ser todo allo arreglado á las Soveranos inten-
 cionas del Rey Ntro. Sor. dirigidas siempre al Mayor posible veneficio
 de sur fieles vasallos los pobres Yndios, especialmte. los de que, como
 nosotros nos hallamos constituidos en notoria miseria y en Pais
 hostilizada de los Barbaros enemigos. Por tanto. Ala justificacion
 y piedad de V. S. conel Mayor rendimiente suplicamos se digne
 proveer en todo como solicitamos en merito de Justicia q. pedimos
 Juramos en forma no proceder de malicia y lo necesario &a. Arruego
 de los presentantes.

YGNACIO DIAS DEL CARPIO.

Decreto.

ARISPE, 17 de Diciembre de 1806.

Por presentado en quanto ha lugar en dro; y para la practica de
 las medidas q. por Fundo de Pueblo y Estancia corresponde á los
 Naturales de Tumacacori dase Comision bastante en forma del Al-
 feres Veterano y actual Comandte. y Jues. politico accidental
 395 del Puesto Militar de Tubac Dn. Manuel de Leon, á quien se
 le previene q. respecto á hallarse situadas aquellas Tierras en
 Terrenos de su Jurisdñ. proceda á medirlos en ocasion y circum-
 stancias en q. se halle desembarazado de las principales atenciones
 del Servicio y q. por la ausencia de tres ó quatro dias q. habia de
 invertir en estas diligencias no haya de experimentarse perjuicio ó
 otrazo en los negocios Militares q. son de su pral. atencion: y el
 dicho Comisionado deveria medir á aquellos Naturales una Legua
 por cada viente ó las quatro por donde mas le acomode de las mejores
 y mas uteles inmediatos Tierras á sus Pueblos sin perjuicio de ter-
 cero y con citacion de los colindantes si los huviese y á demas de las
 citadas quatro Leguas de dotarzn. le adjudicara una Estancia para
 Ganado mayor q. comprehenda á lo mas dos Sitios en el parage q.
 mas acomode á aquellos Naturales. El Senor Yntendente asi lo
 Decreto mando y firmo con los testigos de su assa. con quienes actua
 ss: á falta de Escribano.

ALEXO GARCIA CONDE.

Asa.: RAMON MENDOSA.

Asa.: JUAN ALEXO CARRILLO.

N Aceptacion y Obedecimiento.

Don Manuel de Leon Alferez veterano y actual Comandante del Presidio de Tubac habiendoseme presentado por Juan Legarra Governador de la Mision de Tumacacori á nombre suyo y de todos los Yndios q. hay en dicha Mision el precendente Superior decreto expedido por el Señor Brigadier D. Alexo Garcia Conde Governador Politico y Militar Yntendente de Real Hacienda y Jues Pribativo de Tierras de esta Provincia de Sonora & Dixe q. obedeciendo como desde luego obedesco la Comision q. se sirve conferirme, su Senoria y en virtud de la indicada superior providencia en su consecuencia devia mandar y mande que previa citacion de dicha parte interesada y acompanado de los Yndividuos de mi satisfaccion q. sirvan de testigos de asistencia en la actuacion de estas dilig. se proceda inmediatamente por mi á la practica de ellas conforme corresponda pasando al efecto á dicha Mision de Tumacacori y por este Auto. así lo provey y firme con los testigos de assa. actuando por Receptoria á falta de todo Escribano hoy trece de Enero de mil ochocientos siete.

MANUEL DE LEON.

Assa.: TORIBIO OTERO.

JUAN NEPOMUSENO GONSALES.

Notificacion.

Yncontinenti Yo el Comisionado D. Manuel de Leon estando presente Juan Legarra Governador del á Mision de Tumacacori y los demos Yndios de q. se compone dicha Mision les hise saver el Auto antecedente de que inteligenciados digeron q. se dan por sitados y lo firmo con los testigos de mi assa.

MANUEL DE LEON.

Assa.: TORIBIO DE OTERO.

Assa.: JUAN NEPOMUSENO GONSALES.

Diligencia Sobre Sitaznes.

En esta Mision de San Joseph de Tumacacori en trece dias del mes y año expresados Yo el suso dho. Comandante y Agrimensor Comisionado habiendo solicitado saver que Yndividuos posehedores de Tierras fueren colindantes con las del Pueblo de Tumacacori para con su citacion y comparecencia proceder á la mensura de ellas é informandoseme veridica y radicalmte. por varios Vecinos antiguos del Preso. de Tubac y dela expresado Mision no haver por ningun biente en mi rumbo alindadero alguno mas q. el Presidio de Tubac distante de dicha Mision una Legua mande sentarlo por diligencia y lo firme con los testigos de mi assa.

MANUEL DE LEON.

Assa.: TORIBIO DE OTERO.

Assa.: JUAN NEPOMUSENO GONSALES.

Nombramto. de Oficiales su Aceptacion y Juramto.

En la misma Mision de Tumacacori en dicho dia mes y
 397 ayo Yo el referido Jues Comisionado Don Manuel de Leon
 Alferez Veterano y actual Comandante de Tubac á efecto de
 poder realizar la Mensura q. corresponde á dicha Mision de Tuma-
 cacori tante de Tierras de pan Llevar como para crias de Ganados
 he procedido al correspondiente Nombramiento de oficiales de sufi-
 ciente idoneidad para esta operacion nombrando por contador á
 Lorenzo Berdugo por medidores á Jose Miguel Soto Mayor, y Juan
 Estevan Romero y por apuntadores á Leon Osorio y Ramon Rios
 Vecinos del Preso. de Tubac excepto el ultimo q. es Vecino de
 Tumacacori quienes siendo presentes y comparecidos ante ma y
 echoles saver en sus Personas los indicados oficios de Contador medi-
 dores y apuntadores á q. respectivamente los he nombrado dijeron
 q. aceptandolos como desde luego los aceptan prometen viar y ejercer
 estos encargos, bien fiel y legalmte. sin dolo fraude ni malicia y
 segun su leal saver y entender vajo la Sagrada religion del Jura-
 mento que les recivi y en toda forma de dro. hicieron todos y cada
 uno por Dios Nuestro Senor y la Senal de la Santa Cruz cuyo cargo
 y gravedad les discerni competentemente asi como tambien la obli-
 gacion de sus enunciados respectivos oficios y para la devida con-
 stancia pongo la presente Diligencia q. firma Jose Miguel Soto
 Mayor por si y en Nombre de los expresados oficiales nombrados q.
 no saven firmar y lo firmo y con los testigos de mi assa. en la forma
 ordinaria.

MANUEL DE LEON.
 JOSE MIGUEL SOTO, *Mayor.*

Assa.: TORIBIO DE OTERO.

Asistencia: JUAN NEPOMUCENO GONSALES.

Senalamiento del Centro.

En la Mision de San Joseph de Tumacacori en catorce dias del
 mes de Enero de mil ochocientos siete Yo el mencionado Jues Co-
 misionado Agrimensor Don Manuel de Leon Alferez Veterano
 398 y actual Comandante de Tubac haviendome trasladado á
 dha. Mision acompanado de los oficiales nombrados contador,
 medidores, apuntadores de los infrascriptos testigos de mi assa. y de
 otros cinco Vecinos q. armados acompanaron en calidad de escol-
 teros á efecta de dar principio á la operacion de mensura de las
 Tierras pertenecientes á dicha Mision tante per razon de Fundo
 Legal q. por razon de Mision le pertenecen quanto por razon de
 Estancia para la Cria y aumento de los Ganados asi Mayor como
 menor mande á dicho Governador Juan Legarra y demar Yndios
 de dicha Mision procediesen á senalar el centro, y dandome razon q.
 la Mision en tiempo del Senor Pineda Governador q. rue de estas
 provincias fueron llamados á convenio del qual resulto que se par-
 tiesen las Trras. dejando á los Naturales de esta Mision Valle abajo

rumbo al Norte dejandoles su Senoria facultad de tomar esta falta por el rumbo que mas les acomodase en cuya virtud se tomo por Centro la Cruz fija en el Sementerio—de dicha Mision, para desde dicha Cruz principiari á tirar las medidas q. quieren y piden los referidos interesados Juan Legarra y demas Yndios y para la debida constancia lo firme con los testigos de asistencia.

MANUEL DE LEON.

Assa.: TORIVIO DE OTERO.

Assa.: JUAN NEPOMUSENO GONSALES.

Primera Diligencia de Medidores.

En la referida Mision de San Jose de Tumacacori dia catorce de Enero del ano corriente de mil ochocientos siete Yo Don Manuel de Leon Alferez Vterano y actual Comandante del Presidio de Tubac Jues Agrimensor Comisionado para la mensura de estas Tierras por el Senor Brigadier Don Alexo Garcia Conde Governador Yntendente Jues Politico y Militar y Jues Privativo de Tierras de estas Provincias de Sonora &a. Hallandose presentes los interesados

399 Juan Legarra y demas Yndios q. componen esta Mision de Tumacacori, los oficiales contador Lorenzo Berdugo medidores Juan Esteban Romero Jose Miguel Soto Mayor y apuntadores Leon Osorio y Ramon Rios y los infrascriptos testigos de mi assa. mande que dicho Contador midiese como puntualmente midio en un cor-
del de isole bien retorcido y encerado que he trahido prevendo cinquenta varas castellanos usuales y de á quatro palmos cada una con una vara arreglada corriente y marcada que al intento he trahido igualmente prevenida y haciendo atar fuertemente dos Sancos de Palo mui duro y corrioso en las dos puntos ó extremos de dicho cor-
del de cincuenta varas lo entregue por mi mano á los expresados oficiales medidores con los quales y los de mas mencionados me constitui en el senalado parage del Sementerio frente de la Cruz punto fijo del Centro y puesto por mi un abujon bien ordenado que tambien he traido para el efecto tomamos el biento del Norte y Valle avajo y se fueron cuidadosamente midiendo cincuenta cordeles q. terminaron frente del divisadero que esta entre la cida al bajo y dos Alamos muy gruesos que se hallan fuera del á caja del Rio en donde mande poner y se puso un monton de piedras en señal de Mojonera no siguiendo mas adelante por este rumbo respecto á llegar á las pertenencias del Presidio de Tubac y bueltos al Centro se tomo el biente del sur por el qual se fueron midiendo y contando con igual cuidado trescientos treinta y dos cordeles q. remataron á el lado de arriva pegado á la Cañada inmediata al Sitio llamado Calavasas de donde volvimos al centro y se midieron escrupulosamente biento al Oriente siete cordeles desde la Caja del Rio los q. remataron al pie de la Loma dentro de un mesquitil en

400 cuyo Sitio mande poner y se puso otro monton de piedras en senal de mojonera y haviendose dado por ese rumbo los siete cordeles volvimos á tomar el centro se tomo el viente del poniente por el qual se fueron midiendo y contando con igual cuidado once cordeles que remataron en una Loma tendida en el Sitio

llamado el mesquite Seco en donde mando poner y se puso otro monton de piedras en señal de mojonera quedando alli enteramente concluidas las medidas q. por razon de Fundo Legal y Tierras de Pan llevar se midieron para dicha Mision sin q. haya otras Tierras de Sembradura en todo el Valle ni en sus inmediaciones y tomando algunos cordeles de los expresados de Tierras infrutíferas por los rumbos de Oriente y poniente midiendose todo lo expresado á satisfaccion mia de los oficiales de esta operacion y de los mismos interesados Juan Legarra Gobernador y demas Naturales de dicha Mision en cuyos terminos queda concluida la presente diligencia que firmaron el oficial medidor por si y en nombre de los demas oficiales y Gobernador de dicha Mision q. no saven firmar con migo el relacionado Jues Agrimensor Comisionado y los testigos de mi assa. actuendo por Receptoría en la forma ordinaria.

MANUEL DE LEON.

JOSE MIGUEL SOTO, *Mayor.*

Assa.: TORIBIO OTERO.

Assa.: JUAN NEPOMUSENO GONSALES.

Segunda Diliga. de Medidas.

En dicho dia catorce de Enero de mil ochocientos siete años Yo Dn. Manuel de Leon Alferez Veterano y actual Comandante del Presidio de Tubac Jues Comisionado Agrimensor en prosecucion de la mensura que por razon de Estancia me previene el Senor Brigadier Gobernador Yntendente Politico y Militar Jues Pribativo de Trras. de esta Provincia de Sonora &a. Hallandose presentes los oficiales y demas expresados si se dejarian las medidas para
401 el dia Siguiente á lo q. me digeron q. siendo grandes sus ocupaciones y estando ya todos. Juntos hera lo mas acertado seguir con las medidas hasta donde alcanzarse el dia y oida su razon de ellos mande al Gobernador Juan Legarra que de acuerdo con los hijos prosediese a senalar donde mas les acomodase y conviniese el contro para terreno de la Cria de Ganados ó Estancia el q. asigno el parage de Guevavi incluso la Boca del potrero por parecerle este Sitio mas acepto y conveniente para el efecto como tambien por haver sido Pueblo perteneciente á esta Mision y en donde siempre han mantenido sus Ganados en cuya virtud asigno por centro la Bega del Rio en donde mande poner como ál instante se puso un monton de piedras en el mismo punto centrico señalado para desde el principian y tirar las medidas con arreglo á lo concedido por el Senor Brigadier Dn. Alexo Garcia Conde Gobernador Yntendente y Jues Pribativo de Tierras de estas Provincias de Sonora por Decreto de dies y Siete de Diciembre de mil ochocientos seis y para q. conste lo firmo con los testigos de mi assa.

MANUEL DE LEON.

Assa.: TORIBIO DE OTERO.

Assa.: JUAN NEPOMUCENO GONSALEZ.

Dilig. de Medidas pa. Estancia.

En catorce dias del mes de Enero de mil ochocientos Siete Yo el nominado D. Manuel de Leon Alferez Veterano y Comandante del Presidio de Tubac acompañado de los oficiales nombrados del Gobernador de Tumacacori y sus Yndios de los testigos de mi assa. &a. Me constitui en el centrico señalado de estas Tierras y puesto el abujon bien ordenado se tomó el viento del Norte para el qual se fueron midiendo ochenta cordeles los q. se midieron y contaron con toda escrupulosidad los q. remataron en la misma mojonera que

402 sirve para lo medido de las Tierras de Pan llevar quedando unas y otras en un cuerpo y bueltos al Centro se tomo el biento del sur por el qual se fueron midiendo y contando con igual cuidado y escrupulosidad cincuenta y cinco cordeles que remataron adelante del Pueblo ó Mision antigua de Guevavi en la mora cuesta que hace para vajar al bajo q. tira para el bado seco en donde mande poner y se puso otro monton de Piedras en señal de mojoneras y siendo ya entrada la Noche de este dia mande se suspendiese á hora y se continuase en el de mañana la presente operacion de medidas sentando para la devida constancia esta diliga. q. firmaron el oficial medidor por se y á nombre de los demas oficiales einteresados que no Savan firmar con migo el susodicho Comisionado y los testigos de mi assa. actuando por Receptoria an la forma ordinaria.

MANUEL DE LEON.

JOSE MIGUEL DE SOTO, *Mayor.*

Assa. : TORIBIO OTERO.

Assa. : JUAN NEPOMUCENO GONSALES.

Segunda Diliga Medidas de Estancia.

En el antiguo y decierto Pueblo á Mision de Guevavi á quinze dias del mes y año expresados y el nominada Jues Comisionado Agri-
403 mensur Don Manuel de Leon acompanado de los oficiales nombrados para ella de las partes interesados y testigos demi assa. &a. Me constitui en el punto Centrico señalado de estas Tierras y puesto el abujon bien ordenado se tomo el viento del Oriente para el qual se fueron midiendo y contande escrupulosamente viente y siete cordeles que remataron en un Cerro y haviendo Sido imposible pasar adelante por lo mus fragoso é inasesible de montes escarpado de Cerros me pidieron los interesados que los cordeles restantes

403 selos diese por el rumbo del Potrero que se halla rumbo al poniente y conformandome con esta solicitud como tan regular y admissible mande poner y se puso al pie de dicho Cerro de San Cayetano por el costado q. mira al sur otro monton do Piedras en señal de mojonero y volviendome con todos los expresados en estas diligencias al punto Centrico se tomo el expresado viente del Poniente para el qual se fueron midiendo y contando con la misma escrupulosidad treinta y ocho cordeles que remataron

en la Caida de la Loma mas alta q. se mira del Potrero en donde mande poner y se puso otro monton de piedras quedando la mensura tanto de Tierras de Pan llevar como los dos Sitios para Estancia concluida asatisfaccion mia de los oficiales de esta operacion, en cuyos terminos queda concluida la presente diligencia que firmaron el expresado medidor por si y en nombre de los interesados y demas oficiales q. no Saven firmar con migo el relacionado Jues Agrimensor Comisionado y los testigos de mi assa. con quienes actuo por Receptoría afalta de todo Escribano q. no lo hay en los terminos q. previene el derecho.

MANUEL DE LEON.

Assa.: TORIBIO DE OTERO.

Assa.: JUAN NEPOMUSEÑO GONSALES.

Auto.

En el Presidio de Tubac dicho dia mes y año y el mencionado Jues Comisionado Don Manuel de Leon Alfr. Veterano y actual Comandante de la Compañía de Tubac on vista de hallarse enteramente concluida la comision q. por Superior Decreto di dies y siete de Diciembre de mil ochocientos seis se sirvio conferirme el Señor Brigadier Gobernador Yntendente Politico y Militar Jues Pribativo de Tierras de estas Provincias D. Alexo Garcia Conde para la practica de las presentes diligencias devia de mandar y mande q. originales con citacion y por conducto de las partes interesados se remitan en este estado á la misma Superioridad en puntual y debido cumplimiento de su indicada respectable providencia y para q. en vista de ellas resuelva SSa. lo Q. corresponda y por este Auto de remision asi lo provey mande y firme con los testigos de assa. en la forma ordinaria.

MANUEL DE LEON.

Assa.: TORIBIO DE OTERO.

Assa.: JUAN NEPOMUSEÑO GONSALES.

Notificacn.

Yncontententi Yo el expresado Comisionado notifique é hise saver el Auto antecedenta á Juan Legarra é Yndios de Tumacacori quienes inteligenziados de su contenido dijeron q. se dan por citados y lo firmo con los testigos de assa.

MANUEL DE LEON.

Assa.: TORIBIO DE OTERO.

Assa.: JUAN NEPOMUSEÑO GONSALES.

TUBAC, 17 de de Enero de 1807.

Hoy dia dela fha. fueron entregados estas diligencias comprehensivas de nueve fojas utiles á los interesados Juan Legarra Gobernador de la Mision de Tumacacori é Yndios de dha. Mision y para constancia pongo la presente razon q. rubrico Yo el Comisionado—Señalado con una rubrica.

Escrito.

Senor Comandante Don Manuel de Leon :

Juan Legarra Gobernador de esta Mision de Tumacacori por si y en representacion de todo el Comun de hijos q. existen en esta Mision comparece ante V. M. por medio de este Escrito y dice q. hallandose este nuestro Pueblo Sin los Papeles é instrumentos relativos á Tierras los q. el tiempo ha echo perdidos y sabiendo yo clara y evidentemente que esta Mision colunda por el rumbo de Guevavi con el Rancho de los Romeroes cuyas Mojoneras existen en el dia todavia adelante de la yerba buena en donde existe tambien un Corral en el q. se paraba rodeo por nuestra Mision y por el Potrero llegavan las medidas hasta la punta de la Cienega y Saviendo por

Dn. Manuel Carrera q. en su poder estavan los Papeles y q.
405 dichos sitios havian sido comprados en los años anteriores con el dinero del Fondo del Comun de Mision y Naturales cuyos Papeles no han parecido: por tanto para justificar ante la Superioridad del Señor Gobernador Militar y Politico Vntendte. de Real Hacienda y Jues Pribativo de Tierras de estas Provincias el dro. que tenemos á dichas Tierras q. reconocemos por propias y las q. necesitamos en el dia ál considerar el aumento de Bienes de esta nuestra Mision lo q. en tiempos pasados no havia por cuyo motivo no haciamos este reclamo Suplicamos avm. se digne oirnos y pasar á tomar declaraciones Juradas álos Romeroes, Apodacas, Baes y demas Vecinos antiguos q. saver de esto los q. hemos presentado avm. arruego del Gobernador y Naturales de esta Mision de Tumacacori.

FRAY NARCISO GUTIERRES.

Tumacacori 23 de Diziembre de 1806.

Don Manuel de Leon Alferez de Cavalleria y Comandante del Presidio de Tubac visto el escrito antecedente y echo cargo de el lo di por presentado y admitido para los efectos q. en dro. haya lugar y en virtud diel pase á tomar las declaraciones juradas en toda forma alos sugetos nombrados abajo.

Declarazn. del Sen. Testigo Podaca.

En el Presidio de Tubac en veinte y quatro dias del mes de Diciembre Yo el expresado Comandante Don. Manuel de Leon hise comparecer ante mi y los testigos de mi assa. á Juan Nepomuseno Apodaca Vecino de Santa Cruz á quien impuse enlo q. hera la verdad del Juramento y respondio q. ademas de Saverlo q. hera Juramento prometia por Dios Nuestro Señor y la Señal de la Santa Cruz el decir verdad en quanto selo preguntase y supiese.

Preg. Si save á donde llegavan los Linderos ó mojoneras
406 por el rumbo del sur en donde esta Situado Guevavi como tambien por los demas bientos.

Respde. Que por el rumbo al sur ó el lado donde esta Guevavi

Colinda dicha Mision de Tumacacori con el Rancho de Buenavista conocido por Rancho de los Romeroes que el declarante es interesado en dicho Rancho de los Romeroes y q. save q. existen en el día las Mojoneras q. dividen las Tierras de Tumacacori y Romeroes estando dichas Mojoneras puestas adelante del sitio llamado la yerba buena y q. por el rumbo del Potrero save y jura estaban puestas las mojoneras arriva de la Cienega grande y por el rumbo del oriente estaban puestas las mojoneras en el Cajon de Sonoita en una Mesa que hace mui tendida.

Preg. De donde adquirio estas noticias dice que á el le constan por q. ha visto los rodeos en dicha Mision lo ha oida á los Ministros que ha havido en dicha Mision y á demas le oyo al finario Don Manuel de la Carrera q. si acaso se ofrecian algunas dudas sobre pertenencias de Tierras tanto de las Tierras de dicha Mision como las de los interesados á las de los Romeroes Santa Barbara y otros Sitios q. se hallan tanto por el rumbo de Guevavi como en el Valle del Potrero que ocurriesen asu casa que en su poder hallarian los documentos necesarios.

Preg. Que motivos tiene para asegurar lo q. afirma de Don Manuel de la Carrera y dice q. el selo oyo y save que fue Jues muchos años y q. recogio todos los Papeles de Tierras y Sitios y los llevo consigo.

Preg. Si tiene otra cosa q. declarar en el asunto dice q. no tiene mas q. declarar y ser de edad de setenta años y por no saver
407 firmar hiso la señal de la Cruz y para q. produca los efectos q. combenga lo firmo con los testigos de mi assa con quienes actuo afalta de Escribano Publico ni hallarse en los terminos que el dro. previene.

MANUEL DE LEON.

Assa.: TORIBIO DE OTERO.

Assa.: JUAN NEPOMUSENO GONSALES.

Declaracion del Seg. Testigo Bantista Romero.

En siete de Enero de mil ochocientos Siete Yo el expresado Don Manuel le Leon Jues Politico y Comandante del Presidio de Tubac hise comparecer en mi presencia ante los testigos de mi assa. á Juan Bantista Romero Sargento de la Compañia del Presidio del Tucson y residente en este Presidio por el cargo de Abilitado que sele confirio á quien impuse en la religion del juramente y que mirase el dano q. podia seguirse de jurar falso respondio q. savia á lo q. le obligava el juramento que le preguntase en lo q. el supiese prometia decir verdad.

Preg. Si save de los Linderos á donde llegava la Mision de Tumacacori dijo q. desde mui tierra edad que su finado Padre lo trahia como nino y q. decia q. las medidas de la Mision de Tumacacori colindavan con el Rancho de Buenavista perteneciente á ellos mismos y que dichas mojoneras de Tumacacori existen arriva de la yerba Buena y. q. Dn. Manuel de la Carrera como Jues Politico q. fue de esta Jurisdn. le aseguro q. en su poder existian los Papeles pertenecientes á dicho Sitio como tambien de otros inmediatos.

Preg. Si tiene otra cosa q. declarar responde no tener mas que

declarar y ser cierto lo q. expone y para que produzca los efectos que convenga lo firmo á falta de Escribano Publico con los testigos de mi assa. con quienes actuo.

MANUEL DE LEON.
BANTISTA ROMERO.

Assa. : TORIBIO DE OTERO.

Assa. : JUAN NEPOMUSENO GONSALES.

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Declaracion del Tercer Testigo Pedro Bais.

En nueve de Enero de mil ochocientos Siete Yo el expresado Dn. Manuel de Leon Jues Politico y Comandante de Tubac hise comparecer á Pedro Bais Vecino del Presidio del Tucson á quien impuesto en la religion del Juramento prometio decir verdad en todo quanto fuese preguntado.

Preg. Si save á donde llegan las medidas de la Mision de Tumacacori responde q. la Mision de Tumacacori rumbo al sur colinda a con el Rancho de Buenavta. Rancho q. es de los Romero's cuyas mojoneras dividen á las Tierras de los Romero's y de dicha Mision y q. la mojoneras de dicha Mision existen todavia aunque derrocadas arriva de la Yerba Buena y q. dicha declarante se crio en dicho rancho de los Romero's y q. la Mision tenia sus rodeos en los linderos de la Yerba Buena cuyos bestios se miran en el dia á donde concurrían los Romero's á los rodeos para sacar sus reses y como consta heran Sitios comprados por la Mision y que el Cavo Eugenio á quien el crio y que fue Cavo del Tucson se havia ensenado á leer le havia puesto en sus manos los Documentos justificantes en los quales havia leído y aprendido á leer dicho Cavo Eugenio como tambien q. por el Potrero llegaban las medidas hasta el Pajarito arriva de la Cienega grande donde estaban puestas las mojoneras y rumbo al sur hta. el Cajon de Sonoita en una loma mui tendrida y para q. conste lo firmo con los testigos de mi assa. y dijo ser de edad de ochenta años.

MANUEL DE LEON.

Assa. : TORIBIO DE OTERO.

Asistencia : JUAN NEPOMUSENO GONSALES.

Escrito.

Senor Governador Yntendente Jues Pribativo de Tierras—Juan Legarra Governador de los Yndios del Pueblo de Tumacacori, sito en Distrito de la Pimeria Alta :

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Felipe Mendosa Jose Ygnacio Arriola, Ramon Paupiona, y Xavier Ygnacio de Medina Naturales principales del propio Pueblo, por si á nombre y en representacion del Comun di Naturales de la misma Republica ante la Superioridad de V. S. en los terminos mas conformes á dro. y por medio de la presente formal instancia parecemos y decimos : Que conclusas y a las diligencias de medidas que de las Tierras correspondientes por razon de Fundo Legal de nuestro Pueblo y Estancia para el mismo ha practicado

el Comandante accidental y Jues Politico del Puesto Militar de Tubac D. Manuel de Leon en virtud del Superior decreto de Comision q. V. S. se sirvio librar con fecha dies y siete del ultimo Ditiembre, segun se deduce del adjunta Expediente que en nueve fojas utiles, y vajo la devida solemnidad presentamos: hallandose estas medidas conformes y arregladas á las soberanas y Superiores disposiciones q. rigen sobre la materia: y haviendose igualmente instruido ante agual oficial Comisionado la Judicial Ynformacion q. en tres fojas utiles y con la misma solemnidad tambien exhibimos, por la qual aparece suficientemente justificado el Dro. de propiedad y posesorio q. legitimamente nos corresponde á las Tierras q. por el rumbo del sur y antiguo Pueblo de Guevavi lindan con el rancho de los Romero y hasta mas adelante del parage de la Yerbabuena y por el viento del Norte y Valle del Potrero hasta la punta de arriva de la Cienega grande, lindando asi mismo por el rumbo del oriente hasta el Cajon de Sonoita, cuyos sitios y terrenos nos pertenecen por compra legal publica y Juridica q. de sus primitivos ó antepasados legitimos Duenos y desde en tiempo delos Ex-Jesuitas huro nuestra indicada Mision de Tumacacoi con el Fondo de ella, constante todo de los

410 respectivos Ynstrumentos de venta y traspaso q. otorgados ante legitima autoridad por aquellos antiguos poseedores existian en poder de D. Manuel Fernandez de la Carrera y con el motivo del fallecimiento de este Yndividuo no se ha podido averiguar el paradero de dichos Documentos, cuya legitimidad, esto es, el haver sido adquiridos legalmente en venta Real y con caudal de la mision, aquellos terrenos, se acredita devidamente con la misma juridica informacion que acompañamos, y apedimento nuestro ha prosedido á recibir el citado Comte. y Jues Politico de Tubac. En su consecuencia. Ala notoria Justificacion y vondad de V. S. rendidamente suplicamos se digne mandar librar en favor nuestro y de la indicada nuestra mision el correspondiente Titulo ó Ynstrumento legal q. en devida forma y para nuestra resguardo en todo tiempo acredite la enunciado operacion de señalamiento y adjudicacion de Tierras q. desde luego impetramos asi de las pertenecientes al Fundo del propio nuestro Pueblo y su respectiva Estancia como delas correspondiente: á los indicados sitios que havidos por via de venta en tiempo de aquellos primitivos Misioneros Regulares y constantes de la referida adjunta informacn. necesitamos indispensablemente y con urgencia, respecto á q. por el considerable y progresivo aumento que han tomado y cada dia toman nuestros Bienes de Campo, no es suficiente para ellos el terreno medido para Estancia que comprehenden las Dilig. practicadas por aguel oficial Comisionado: protestando como formalmente protestamos sugetarnos y senirnos Siempre á los terminos Demarcacion y Linderos de todas las expresadas Tierras como propias nuestras y en virtud de la legiti-

411 midad accion y derecho q. nos prestara el impetrado Titulo de este Superior Jusgado privativo por ser asi de Justa. q. pedimos y q. en ello recibiremos gracia y merced á mas de ser mui conforme á lo prevenido por su Magestad en las Reales Ynstrucciones que

gobiernan en el asunto Juramos en forma no ser de malicia y lo necesario & a arruego de los presentantes.

YGNACIO DIAS DEL CARPIO.

Decreto.

ARISPE, dies y seis de Marzo de mil ochocientos siete.

Por presentado: Unase al expediente einformacion q. acompaña y pase al Asesor. El señor Gobernador Yntendente y Jues Privativo de Tierras de estas Provincias así lo Decreto mando y firmo.

GARCIA CONDE.

Dictamen.

Señor Gobernador Yntendente—Apedimento de Juan Legarra como Gobernador del Pueblo de Tumacacori en la Pimeria Alta por si y todo el comun de aquella Republica se han medido á esta en virtud del Decreto de V. S. de once de Diciembre ultimo, las quatro Leguas que le corresponden por Fondo de Pueblo y á mas una Estancia para Ganado mayor; todo conforme á lo que previones las Leyes é Ynstrucciones q. rigen sobre la materia en esta Provincia. No contentos aguellos N^{aturales} con dicha mensura, solicitan seles adjudique el terreno q. ocupava el despoblado Pueblo de Calabasas cuya dimencion esta justificada con la informacion que ante el Comandante y Jues Politico de Tubac se siguió apedimento de los mismos Yudios; y llegan á los linderos que en ella se contienen— Los Ganados y Cavallada de Tumacacori van aumentandose cada dia mas á esfuerzos de los Naturales, y con el arreglo y Direccion de su actual Ministro el R. P. Fr. Narciso Gutierrez, pr lo q. deve conceptuarse necesario todo aguel terreno para la conservacion

412 y aumente de dichos Bienes: y soy de Dictamen q. aprobando V. S. aguellas medidas, y adjudicandosele á aguel Pueblo las contenidas en ella, por via de Fundo legal y las q. expresan y contienen los linderos de Calavasas, todo sin perjuicio de tercero que mayor derecho venga, y con la precisa condicion de q. si el citado Pueblo, q. ahora esta despoblado se poblase de nuevo, sele hayan de restituir sus tierras, se libre por V. S. Titulo en forma á aguellos Naturales, para guarda de sus derechos: ó V. S. resolvera lo q. mejor le paresca.

Arispe Marzo treinta y uno de mil ochocientos siete.

LIZENCIADO TRESIERRA.

Auto.

En la ciudad de Arispe á treinta y un dias del mes de Marzo de mil ochocientos siete años. El Señor Don Alexo Garcia Conde Brigadier de los Reales Exercitos Gobernador Politico y Militar Yntendente de Real Hazienda y Jues Pribavito de Ventas composiciones y repartimiento de Tierras de las Provincias de Sonora y Sinaloa por su Magestad (Que Dios Guarde) Haviendo visto las prece-dentes Diligencias instruidas para el señalamiente y consignacion

de las tierras que respectivamente les corresponde álos Yndios de la Mision de Tumacacori por razon de Fundo Legal de su Pueblo y para Estancia ó rancho del mismo é Ynformacion recibida en justificacion de los terrenos que ademas de aquellos y como adquiridos por una de Venta les pertenece legitimamente álos mismos Naturales y su Mision con lo expuesto por el Asesor de esta Yntendencia y Gobierno en su antecedente parecer Ynstruido el dia de hoy—Dijo S. S. que de conformidad con lo Dictaminado por el propio Teniente Letrado, y aprovando (como arregladas y conformes álas soberanas y superiores disposiciones q. rigen sobre la materia) las indicadas Diligencias de Medidas é Ynformacion practicadas por el actual

413 Comandante Jues Politico y Militar del Puesto de Tubac Alferéz Don Manuel de Leon, los hacia y desde luego hace S. S. álos citados Pueblo y Naturales de Tumacacori adjudicacion en forma de las mismas Tierras á q. se contrahe este Expediente, para q. como suyas propias, adquiridas legalmente, y por ambas razones de Fundo legal de aguel Pueblo y estancias q. necesita y les corresponden, las disfruten bien y posean libremente á todo su arvitrio y voluntad para su propio aprovechamiento en Comun y en particular, y para la desente subsistencia de la Yglesia de su enunciada Mision : pero como la precisa expresa y terminante condicion de q. por ningun caso, de manera alguna ni en ningun tiempo podran ni deveran enagenar parte alguna de los mencionados terrenos q. soles adjudica senales y consigna, por deverse ellos reconocer estimar y mantener siempre por de la propia Republica y Comunidad de Naturales unicamente para sus atenciones precisas asi relativas álas Siembras de granos y demas efectos de primera necesidad como ála Cria, mayor posible incremento y conservacion de sus Bienes de Campo ; y vajo la expresa calidad tambien de q. siempre y quando q. haya lugar de repoblarse por los Yndios dela misma Nacion el antiguo y decierto Pueblo de Vinta de Aguella Mision nombrado Calabasas, han de restituirsele á este y serle consignadas las Tierras que precisa y legitimamente le correspondan y haviese de necesitar pa. ambos indicados obgatos, y de q. la misma presente adjudicacion señalamiento y consignacion de Tierras deve precisamente entenderse sin perjuicio alguno de tercero de mejor dro. á ellas é que legalmente en tiempo y forma la represente: En cuya conformidad

devia mandar y su Senoria mando se libre por esta Yntendencia y Jugado Pribativo de su cargo el correspondiente Titulo en la forma ordinaria y afavor de los referidos Naturales interesados y su expresado Pueblo para su resguardo, constancia en todo tiempo, y demas usos y efecto q. justamente les corresponda. Y por este Auto, q. seles hara saver álas mismas partes Ynterésados, asi lo proveyo mando y firmo S. S. por ante los Ynfra-scriptos testigos de su assa. ordinaria con quienes actua por Receptoría en falta de todo Escribano conforme á derecho.

ALEXO GARCIA CONDE.

Assa.: RAMON MENDOSA.

Asistencia: JOSEPH DE BERROTERAN.

Notificacn.

Yncontententi comparecido en este Juscado Dn. Ygnacio Dias del Carpio como Apoderado nombrado para el presente asunto por los Naturales de Tumacacori sele notifico é hiso saver en su persona el anterior Auto y Dictamen q. le precede de q. quedo inteligenciado y lo firmo con su Señoria y testigos de asistencia.

GARCIA CONDE.

YGNACIO DIAS DEL CARPIO.

Assa.: RAMON MENDOSA.

Assa.: JOSE DE BERROTERAN.

Por Tanto, usando de las facultades que por el preinserto Artículo 81. de las Real ordenansa é Ynstruccion de Yntendentes estan concedidas á el empleo que ejerso y en conformidad de lo dispuesto por la Real Cedula Instructiva sobre este Ramo de quince de Octubre de mil setecientos cincuenta y quatro que en el mismo Artículo se cita por el presente á nombre de su Magestad (L. D. G.) confiero Merced y adjudicacion en forma de las Tierras de Pan llevar y para cria y pastadero de Ganado Mayor Cavallada y Mulada, q. se expresan y designan en las preinsertas Diligencias de Medidas é Ynformacion, á la Comunidad de Yndios del Pueblo de Tumacacori sito en Distrito de la Pimeria Alta y Jurisdiccion del Puesto Militar de Tubac, cuyos indicados Terrenos de Lava y para Ganados les
415 concedo doy y adjudico á los mismos Naturales sus hijos herederos y subesores con todas sus entradas, salidas, usos, costumbres, y servidumbres, Montes, Pastos, Aguages, Abrevaderos y demas que les corresponda y se comprehenda dentro de sus Medidas Demarcacion y Linderos, segun y conforme lo expresan las mismas preinsertas Diligencias, á cuyos terminos y pertenencias señaladas deveran precisamente sugetarse y cenurse los referidos Yndios del Pueblo de Tumacacori sin propasarse ni excederse á ocupar mas terreno del enunciado que seles consigna y adjudica por el presente Titulo, vajo las expresas calidades y condiciones siguientes: 1a. Que esta Merced Señalamiento y adjudicacion de Tierras, deve precisamente entenderse sin perjuicio de qualesquiera Ynterésados que mejor Derecho á ellas represente con legal accion y en tiempo y forma competente: 2a. Que siempre y quando se verifique el Repueble y restablecimiento del desolado Pueblo de Calabasas (Que es visita de la propia Mision de Tumacacori) hade ser reintegrado y restituido de las Tierras que respectivamente le correspondan por razon de Fundo legal de su Pueblo y Estancia para Ganados, por los mismos Naturales de Tumacacori: 3a. y ultima: Que estos interesados indispensable y forzosamente hande mantener Cultivadas amparadas y pobladas las referidas adjudicadas Tierras con sus Lavores y Bienes de Campo, procurando siempre el mayor posible aumento y progreso de estos y aquellas y sin q. de pinguna manera ni por tiempo alguno se verifique hallarse totalmente des poblados deciertos y abandonados los supracitados

terrenos, vajo el serio apercivimiento de que si por espacio de tres años completos y consecutivos se experimentase el total
 416 despueble y abandon de ellos en tal evento seran adjudicados á qualesquiera persona q. los denunciare. Y mando y ordeno estrechamente á el actual Comandante y Jues Politico del susodicho Pueblo de Tubac y á los demas que les sucedan en el propio empleono permitan toleren ni concientan que los expresados Naturales de Tumacacori por ningun motivo causa ni pretexto sean molestados perjudicados ni perturbados en el libre uso Dominio y exercicio de las relacionadas Tierras, y antes si cuidaron de que constan temente sean mantenidos y amparados en quieta y pacifica posecion de ellas: Previniendo como igualmte prevengo a la misma Comanadad de Yndios pongan y mantengan Mohoneras firmes de cal y canto de alto y grueso correspondiente, con las quales se señalen dividan y distinguan en todo tiempo sus Linderos y portenencias con las de otros colindantes y Realengos. En cuya conformidad y aconsecuencia de lo resuelto por mi en Auto Asesorado de treinta y uno del proximo anterior Marzo, q. va inserto, libro el presente Titulo de adjudicacion Merced y confirmacion en forma afavor de los mencionados Yndios Comunidad y Republica de Tumacacori: Y tomandose en el Libro que corresponde la razon necesaria del mismo Titulo seles entregara origl. álos Ynteresados para su resguardo y q. les sirva en todo tiempo de Documento Justificativo de la propiedad accion y dro. que legitimamte, tienen álas supracitadas trras. Dado en la Ciudad de Arispe álos dos dias del mes de Abril de mil ochocientos Siete años: autorizado y firmado de mi mano, sellado con el de mis Armas y pr. ante los Yufrascriptos testigos de mi assa. con quienes actuo por Receptoría á falta de todo Escribo. segn. dro.

[SEAL.]

ALEXO GARCIA CONDE.
CORREGIDO.

Assa.: RAMON MENDOSA.

Assa.: JOSÉ DE BERROTEN.

417 RAZON.—Queda tomada Razn. de este Titulo á fojs. lo vta. del Quademo No. 174. q. existe archivado en este Jusgdo. Privó. y pá Constancia pone la preste. Razon Rubricada pr S. S.

El mes de Junio de 1821. fueron medidos á Dn. Leon Herreros de esta Vecindad uno y tres quartos Sitios en el Paraje de san Jose de Sonoyta, por denuncia hecho ante el Sor. Comandante Gral. de estas Provincias Brigadier Dn. Antonio Cordero, siendo Yntendte. de las citadas Provincias, de cuyas medidas cajon abajo al mismo Sonoyta resulto su remate al frente de dos cerritos que le nombran los quates, por este rumbo linda con el terreno de la Mision del Pueblo de Tumacacori, y en atencion á que quando se verifico la expresada medida, para no introducirse en lo merceñado al referido Tumacacori, solo se tuvo á la vista las medidas que por razon de Fundo sele havian dado con mas dos estancias, se creyo que lejos de introducirse en lo midido á Tumacacori quedava en el intermedio un Gueco Valdia de cosa de una Legua poco mas ó menos, mas haviendo manifestado en el dia el Padre Ministro del

enunciado Pueblo de Tumacacori Fr. Ramon Liberos, un expediente, en el qual consta, que a mas de su fundo de quatro leguas, y las dos estancias medidas, sele amplio mayor terreno por El Como. Sor. Dn. Alexo Garcia Conde siendo Yntendente de estas Provincias por embos rumbos: y á vitud de que por el del oriente el lindero que se cita hay su duda del que verdaderamente deva ser, para evitar ocurso y representaciones antelos Tribunales que corresponde, tento el Padre, Ministro Fr. Ramon Liberos, á nombre del Pueblo, como Dn. Leon Herreros han convenido y conformadose el que el lindero que divida á uno y otro terreno sea cajon arriva á Sonoyta, en la loma que le nombrar
 418 de las Cruces: y á mas de esto, el que en todo tiempo pueda el mismo Herreros en todo lo que pertenece el cajon abajo mantener bienes de su pertenencia, sin que en ellos sea perjudicado, y los pedazos de tierra de pan llevan que seguir para el mismo cajon abajo, en ningun tiempo puedan ser Sembrados por otros sugestos que unicamente quando les convenga por solo los Yndios el Pueblo, y no por nunguna otra persona, en lo qual quedaron convenidos los interesados ante mi el Capitan grnde. Dn. Ygnacio Elias Consales Comandte. de este Presidio de Tubac, pidiendo igualmente que esta diligencia se pusiese para constancia al fin de cada uno de los expedientes que parar en poder de los citados interesados, quienes lo firmaron con migo y testigos de assa. afalta de escrivano segun derecho en dies dias del mes de Enero de mil ochocientos veinte y tres.

YGNACIO ELIAS GONSALES,
 Por D. LEON HERREROS.
 JOSÉ MARIA SOTELO.
 RAMON LIBEROS.

Assa.: TRINIDAD YRIGOYEN.

Assa.: JOSE ANTO. SOTELOS.

(Endorsed:) Filed in the office of the clerk court of private land claims January 15, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed:] No. 8. F No. 4. In the court of private land claims, Arizona district. Wm. Faxon, Jr., trustee, *et al. vs.* The United States of America *et al.* Tumacacori and Calabasas grant. Certified copy of original titulo of 1807. Filed Jan. 15, 1894. James H. Reeder, clerk, by R. L. Long, dep. clerk. Francis J. Heney, attorney for Wm. Faxon, Jr., trustee, *et al.*

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OFFICE OF SURVEYOR GENERAL,
 TUCSON, ARIZONA, December 30th, 1893.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,
 U. S. Surveyor General, District of Arizona.

EXHIBIT 9.

Tesorería del departamento de Sonora, año de 1844.

Título

De venta, traspaso y adjudicacion de las tierras de labor o labrantio y de los terrenos para cria de ganado mayor y caballada, que comprenden las ciatro leguas del fundo legal del despoblado pueblo de Tumácacori y los dos sitios de su estancia de Calabasas y demás puntos anosos, unas y otros de temporalidades, sitios en jurisdiccion del partido de San Ygnacio; espedido por la antecitada Tesorería departamental en cumplimiento del supremo decreto de 10 de Febrero de 1842, á favor del Sor. D. Francisco Alejandro Aguilar vecino q. del comercio del puesto y villa de San Fernando de Guaymas.

420 Sello Segundo. (Seal.) Cuatro Pesos.

Años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Ygnacio Lopez, capitan de caballeria retirado en infanteria, Yntendente honoraria de ejército y Tesorero del departamento de Sonora.

Por cuanto el supremo decreto de 10 de Febrero de 1842, dispone la enagenacion por cuenta de la anhustiaada hacienda publica, de las fincas pertenecientes al ramo de temporalidades; siendo de esta clase respectivamente las tierras de labrantío, y los terrenos para cria de ganado mayor y caballada, de las cuatro leguas del fundo legal del despoblado pueblo de Tumacacori, y de los dos sitios de la estancia del mismo en los puntos de Guebavi, Potrero, Cerro de San Cayetano y Calabásas, cuyas áreas, linderos, mojoneras y colindaciones se espresan en las correspondientes diligencias de medidas, practicadas en el año de 1807, por el Comisionado agrimensor Dn. Manuel de Leon alferes veterano y Comandante que fue del Presidio de Tubac, segun las informaciones que relativamente se han practicada á solicitud de esta Tesorería departamental; Valuadas las mencionadas tierras y terrenos de temporalidades en la cantidad de quinientos pesos, conforme á lo prevenido en el articulo 2º del antecitado supremo decreto de 10 de Febrero de 1842; y dandole su puntual cumplimiento, dispuse la formacion del correspondiente expediente por medio del Juscado de primera instancia y de hacienda del

421 partido de San Ygnacio, en cuyos pregones no resultó ningun postor; por lo que, y con sufeccion al articulo 73. de la ley de 17 de Abril de 1837, por no panar de quinientos pesos la enagenacion de que se trata por cuenta del erario Nacional, se procedió por esta propia Tesorería á la respectiva subasta pública de las ya nominadas tierras del despoblado Tumacacori y terrenos de su estancia de Calabasas y demas puntos anecosos, unas y otros pertenecientes al ramo de temporalidades, en los dias 16, 17, y 18 del corriente mes de

Abril en solicitud de postores, sin que hubiese habido ningun otro mas que el Sor. D. Francisco Alejandro Aguilar del comercio y reindad de este

Sello Tercero.

(Seal.)

Un Peso.

Años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

[SEAL.] puerto y villa de San Fernando de Guaymas, por la misma cantidad de los quinientos pesos del avaluo, en que le han sido rematadas dichas temporalidades, segun consta de la tercera y ultima almoneda, que á la letra és como sigue. En el puerto y villa de San Fernando de Guaymas, á diez y ocho de Abril de mil ochocientos cuarenta y cuatro, hallandome constituido yo el infraescrito Tesorero departamental, en el oficio de esta tesoreria de mi cargo, con los testigos de mi asistencia Dn. José Maria Mendosa y Dn. Vicente Yrigoyen en falta de escribano de hacienda y de todo otro público, cumpliendo con lo prevenido en el articulo 73 de la ley de 17 de Abril de 1837, mediante que el precio ó valuo de las temporalidades á que se contraen estas diligencias, no pasa de quinientos pesos; dispuse se celebráse la tercera y última almoneda para el remate de las tierras y terrenos de temporalidades de Tumacacori y Calabajas de que trata este expediente; y que al efecto se diese á son de caja un pregon al público, como efectivamente lo dió el pregonero Florentin Baldizán en altas y claras voces, diciendo:

“La Tesoreria departamental va á rematar por cuenta de la hacienda nacional, y con arreglo al supremo decreto de 10 de Febrero de 1842, las tierras de labor ó labrantio y los terrenos para cria de ganado mayor y caballada, que comprenden las cuatro leguas del fundo legal del despooblado pueblo de Tumacacori los dos sitios de la estancia del mismo y despoblada en los puntos de Guebavi, Potrero, cerro de San Cayetano y Calabásas, sitios en el partido de San Ygnacio, cuyas áreas, mojoneras, linderos y colindaciones, se expresen en las correspondientes diligencias de medidas practicadas en el año de 1807, por el comisionado agrimensor D. Manuel de Leon alferez veterano y Comandante que fue del presidio de Tubac, segun consta de las informaciones que relativamente se han instruido á solicitud de la propia Tesoreria departamental, constando igualmente de ellas que sun ecisten los títulos primordiales de merced y confirmacion de las repetidas temporalidades; las cuales han sido valuadas ahora en quinientos pesos con arreglo al articulo 2º del ya citado supremo decreto de 10 de Febrero de 1842. Quien quisiere hacerlos postura, ocurra á verificarlo ante esta Tesoreria departamental donde se le admitirá conforme á las leyes: En concepto de que ahora mismo ha de quedar celebrado el ramate a favor del que fuere mejor postor.” En cuyo acto comparecio el Sor. D. Francisco Alejandro Aguilar del comercio y vecindad de este puerto, haciendo la postura de los mismos quinientos pesos en que están valuadas las referidas temporalidades; y no habiendo ocurrido ningun otro postor, siendo ya dada la plegaria de las doce de este dia, dijo

por último al pregonero: "Á la una, á las dos, á las tres: que se remate, que se remate, que se remate: que buena, que buena, que buena pro le haga al Sor. D. Francisco Alejandro Aguilar." En tales terminos se concluyó este acto, quedando pública y solemnemente rematadas las antedichas tierras de labrantío y terrenos para cria de ganado mayor y Caballada de los despoblados fundo y estancia de temporalidades de Tumacácori y Calabasas, á favor del Sor. D. Francisco Alejandro Aguilar del comercio y recindad de este puerto, por la suma de quinientos pesos. Y para la debida constancia y efectos consiguientes, se cerró y sentó esta diligencia que que firmá con el Sor. interesado y los infraescritos testigos de mi asistencia.

YGNACIO LOPEZ.
FRANCISCO A. AGUILAR.

Asistencia: JOSE MARIA MENDOSA.

Asistencia: VICENTE YRIGOYEN.

En cuyos legales términos se concluyó el remate de las tierras de labor ó labrantío y los terrenos para Cria de ganado Mayor y Caballada, que comprenden las cuatro leguas del despoblado fundo de Tumacácori y los dos Sitios de su estancia de Calabasas y demás puntos anecosos, unos y otros de temporalidades, sitas en jurisdiccion del partido de San Ygnacio; quedando custodiado el espediente original en el archivo de esta Tesorería para perpetua constancia: siento advertencia que cuando sean habidos los titulos primordiales de Tumacacori y Calabasas, se agregarán al presente.

Por tanto, y habiendose rematado pública y solemnemente
424 las tierras de labor ó labrantío y los terrenos para cria de ganado Mayor y Caballada, que comprenden las cuatro leguas del fundo del despoblado pueblo de Tumacácori y los dos sitios de su estancia de Calabasas y demas puntos anecosos, unas y otros de temporalidades, en jurisdiccion del partido de San Ygnacio,

Sello tercero.

(Seal.)

Un Peso.

Años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

[SEAL.] á favor del Sor. Dn. Francisco Alejandro Aguilar, vecino y del comercio de este puerto, por la cantidad de quinientos pesos, cuya numa con los demás derechos pertenecientes al fisco, ha enterado en esta Tesorería departamental: y usando yo en consecuencia, de las facultades que me conceden las leyes concernientes, así como tambien el supremo decreto de 10 de Febrero de 1842, por el presente titulo y á nombre de la nacion mejicana y del supremo Gobierno, concedo, vendo, doy y adjudico en toda forma las espresadas tierras de labor ó labrantío y los terronos para Cria de ganado Mayor y Caballada, que comprenden las cuatro leguas del despoblado fundo de Tumacácori y los dos sitios de su estancia de Calabasas y demas puntos anecosos ya citados, al referido Sor. comprador Dn. Francisco Alejandro Aguilar, por via de venta y con las calidades, solemnidades, firmeza y subsistencia que estableco el derecho, para

si, sus hijos, herederos y sucesores, con todas las entradas, salidas, tierras, montes, bosques, arbustos, maderas, pastos, centros, circunferencias, aguas, aguages, abrevaderos, usos, costumbres, servidumbres y demas cosas anexas que á dichas posesiones pertenecen, con sus acotaciones y terminos linderos, por la nominada cantidad de quinientos pesos en que han sido remutadas al expresado

425 Sor. D. Francisco Alejandro Aguilar: con la precisa condicion de que este comprador y sus sucesores en su caso, han de mantener pobladas, poseidas, cultivadas y amparadas las sobredichas tierras de labor ó labrantio y los referidos terrenos para cria de ganado mayor y caballada, que comprenden las cuatro leguas del despoblado fundo de Tumacacori y los dos sitios de su estancia de Calabasas, sin salirse de sus terminos linderos, y sin que esten totalmente abandonados; en concepto de que si se verificase el enunciado total abandono y despueblo de las connotadas tierras y terrenos por el tiempo de tres años consecutivos, por una omision ó culpabilidad de sus dueños y poseedores, y hubiese alguna persona que las denunciare, en tal evento, con previa calificacion del hecho, se declararán por baldías y se rematarán en pública subasta por cuenta del erario nacional, á favor del que fuere mejor postor; asceptuan doso como es justo aquellos casos en q. el abandono, despueblo ó desamparo, ses por notoria invasion ú hostilidades de enemigos, ó de epidemias ú otras causas semejantes, y por solo el periodo ó periodos de semejantes acontecimientos. Provisiondose como estrechamente se previene al precitado Sor. D. Francisco Alejandro Aguilar y á sus sucesores, que habran de sujetarse á las pertenencias, terminos y linderos de las antedichas tierras y terrenos del fundo de Tumacacori y su estancia de Calabasas, enhiestando y manteniendo en dichas posesiones las convenientes mojoneras de cal y canto, bajo las penas establecidas por las leyes en caso de omision. Y con las facultades que ellas y diversas superiores disposiciones que rigen en la materia, me conceden y confieren, ordeno y excito respectivamente á los Senores Jueces, Justicias y

426 Autoridades locales que al presente son y en adelante fueren del partido de San Ygnacio, que en obsequio de la buena y pronta administracion de justicia, y en observancia de las mencionadas disposiciones legales, no permitan que el espresado Sor. D. Francisco Alejandro Aguilar ni sus sucesores, sean de ninguna manera perturbados, inquietados ni molestados en el libre uso, ejercicio, propiedad dominio y posesion de los mencionadas tierras de labrantio y terrenos para Cria de ganado mayor y caballada, del fundo de Tumacacori y estancia de Calabasas; antes si celarian y cuidarán con la mayor eficacia, de que sean emparados y mantenidos siempre en la quieta y pacifica posesion que les corresponde con legitimo derecho, para que de este modo puedan libremente disfrutar, gozar, poseer, vender, combiar, permutar, trocar, donar, trespasar, legar, ceder y enagenar las repatidas tierras de labor y terrenos para Cria de ganado Mayor y Caballada, de las cuatro leguas del fundo de Tumacacori y de los dos sitios de su estancia de Calabasas y demas puntos anexas, á su arbitrio y libre eleccion, como dueños propietarios absolutos de las mencionadas posesiones; siendo igualmente

advertencia, que tan luego como sean habidos los titulos primordiales de las propias tierras y terrenos, seran agregados al presente, pues al efecto se da desde ahora por hecha y verificada la trasmision y entrega de dichos documentos primitivos, á favor del sor. interesado D. Francisco Alejandro Aguilar. En cuyos terminos espedi este titulo de venta, traspaso y adjudicacion en forma, al mismo Sencr Aguilar, sus herederos y sucesores, entregandose al primero para su resguardo y demas usos que le convengan, con previa
 427 toma de razon donde corresponde. Dado en al puerto y villa de San Fernando de Guaymas á los diez y nueve dias del mes de Abril de mil ochocientos cuarenta y cuatro, autorizado y firmado por mi el tesorero departamental, sellado con el sello que usa esta tesoreria, por ante los infraescritos testigos de mi asistencia, en falta de escribano de hacienda y de todo otro pública que no lo hay, segun derecho.

[SEAL.]

YGNACIO LOPEZ.

Assa. : JOSÉ MARIA MENDOSA.

Assa. : JOSÉ DIEGO LABANDERA.

(Endorsed :) Filed in the office of the clerk court of private land claims January 15, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed :] No. 8. F., No. 3. In the court of private land claims, Arizona district. Wm. Faxon, Jr., trustee, *et al. vs.* The United States of America *et al.* Tumacacori and Calabasas grant. Certified copy of original titulo of 1844. Filed Jan. 15, 1894. James H. Reeder, clerk, by R. L. Long, dep. cl'k. Francis J. Heney, attorney for Wm. Faxon, Jr., trustee, *et al.*

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Translation of Exhibits 8 & 9.

ARISPE, 1807.

Title of adjudication, duly confirmed, of the lands belonging to the natives of Tumacacori, in consideration of the fundo legal of the pueblo, issued in favor of the Indians, their community and republic, by the juzgado privativo de tierras de la intendencia of governo- of the provinces of Sonora and Sinaloa.

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Charles 4th, whom God preserve, King of Spain, twenty-four reals, first seal, twenty-four reals, years 1796 and 1797; six dollars, Charles 4th, whom God preserve, 1806 and 1807.

Don Alexo Garcia Conde, brigadier of the royal armies, intendente of province, of the royal treasury, political and military governor, and judge privativo de medidas, ventas, composiciones y repartamientos of the provinces of Sonora and Sinaloa, by his majesty, whom God preserve, etc.

Whereas the King, our lord, by article 81 of the royal ordenanza and instruction of intendentes issued in Madrid on the 4th day of December, 1786, has been pleased to order to be annexed to the

jurisdiction of those magistrates the authority of the juzgado privativo de medida venta and of lands in their respective provinces, as required by the article, which is of the following tenor:

Article 81. The intendentes shall also be judges "privativos" in matters occurring in the districts of their provinces in relation to sales "composiciones" and distribution of vacant lands (tierras realengas), the possessors of the same and those who petition for new concessions being required to set forth their rights and to make their petitions before the said intendentes, so that, they being duly informed in the relation to the matter of proper officers or authorities appointed, the same may be determined in accordance with justice, taking the opinion of the proper attorney and allowing an appeal to the "superior junta haciendo" or submitting to the same the original proceedings when they are in a condition for title to be issued, to the end that in view of the same, that if there is no doubt in relation to the matter the titles may be issued, or that such proceedings may be taken as the junta may require; in the meantime the corresponding confirmation may be made without further difficulty, which will be issued in due time by the said superior junta;

proceeding in this matter, as also the intendentes, their sub-
430 delegates and others, in accordance with the requirements of the royal instructions of the 15th of October, 1754, so far as the same is not in opposition to this, without losing sight of the provisions of the laws referred to therein and of title 9-12, Book 4.

In consequence thereof, and a petition having been made to this "intendencia" and juzgado privativo of lands by the community of the natives of the pueblo "Tumacacori," situated in the district of Pimeria Alta, for the making out and the adjudication of the lands corresponding to them, as well for the "fundo legal" of their pueblo as for the "estancia" or rancho of the same, in accordance with the superior royal orders in relation to the matter, the corresponding proceedings have been instituted, which is as follows:

To the senior, governor intendente, judge privativo of lands, Juan Legarro, governor of the Indians of the pueblo Tumacacori, situated in the district of La Pimeria Alta:

Filipe Mendoza, Jose Ignacio Arriola, Ramon Panplona Jabier, Ignacio Medina, the principal natives of the said pueblo, and being at present in the capital, for themselves and in the name of and in representation of all the natives of the community of that republic, before your honor in due form of law appear and say:

That our pueblo needing the lands necessary for and corresponding to the same as a fundo legal, as also for "estancia" or rancho, since inasmuch as the ancient title under which the same was acquired has been lost, we are entirely ignorant of the terms in which the same was made and, as a matter of course, of the true and legitimate boundaries of the same, and are therefore under the urgent necessity of asking that the same be marked out in accordance with the orders of his majesty and other superior orders in the matter.

Wherefore we apply to your honor, earnestly praying you to be

pleased to direct such proceedings to be taken as may be necessary,
 so that, at once and in accordance with the general orders of
 431 those sovereign authorities, the said distribution of the lands
 for both purposes may be made, which should be conceded
 to us, with the understanding that the four leagues (one toward
 each wind) that, on account of the "fundo" of the pueblo, are to
 be marked out to us, are to be measured in a proportional and
 equitable extent in the direction that we may desire, at our discre-
 tion, for the just and prudent end, including within the said four
 leagues such lands as are suitable for sowing purposes, and with
 the understanding also that, in relation to the lands that are to be
 given as an "estancia" (ranch), they are to include the post of
 Guebabi and its appurtenances, as well because this land is the most
 suitable for the stock of our mission of Tumacacori and offers the
 best advantages for the increase of the same, as the Guebabi has
 been considered as the property of the said mission as the pueblo
 cavesa (chief pueblo) of the same; and I, the present governor,
 being one of the natives of the ancient pueblo of Guebabi, we also
 ask that there be included in the said sitios the post or place
 named "La Boca del Potrero," this being useful to us from the fact
 that it is situated near our mission; wherefore, in the terms set
 forth in this our earnest and formal petition, we rely on the benefi-
 cence of your honor to cede to us what we ask as a matter of
 justice to the community of natives of our republic, all in accord-
 ance with the sovereign intentions of the King, our lord, which are
 always directed towards the benefit of his faithful vassals, the poor
 Indians, especially those who, like us, are surrounded by hostile
 and barbarous enemies.

Wherefore we pray your honor to be pleased to grant what we
 ask, since the same is just, swearing that we do not proceed in
 malice, and whatever is necessary, at the request of the parties
 present.

IGNACIO DIAZ DEL CARFIO.

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ARIZPE, December 17th, 1806.

The foregoing having been duly presented according to law for
 the purpose of making the measurements of the "fundo" of the
 pueblo and the "estancia" corresponding to the natives of Tuma-
 cacori, let a commission be given in due form to the veteran ensign,
 actual commandant, and accidental political judge of the military
 post of Tubac, Don Manuel de Leon, who is required, in considera-
 tion of the facts that said lands are situated in his jurisdiction, to
 proceed to the measurement of the same, selecting for the purpose
 such a time as he may be least occupied with the duties of the
 service, and when by an absence of three or four days, which this
 matter may require, the military matters which require his prin-
 cipal attention will not suffer by his absence, and the said commis-
 sioner shall measure to said natives one league toward each wind
 or the four leagues, where it may best suit them, of the best lands
 adjoining their pueblo, without prejudice to third parties, ceding

for this purpose the colindantes, if there should be any; and, besides the said four leagues, there shall be adjudicated to them an "estancia" for stock of the larger kind, which shall include, at the most, two sitios in the place most convenient to those natives.

The senior intendente thus decreed, ordered, and signed with the assistant witnesses, with whom he acted for want of a notary public.

ALEJO GARCIA CONDE.

Assistant: CITIZEN RAMON MENDOZO.

Assistant: JUAN ALEJO CARRILLO.

Don Manuel de Leon, veteran ensign and actual commandant of the presidio of Tubac, Juan Legarro, governor of the mission of Tumacacori, for himself and in the name of all the Indians in said mission, having presented the present superior decree issued by Senor Brigadier Don Alejo Garcia Conde, political and military governor,

433 intendente of the royal treasury, and judge privativo of the lands of the province of Sonora, &c., said that, obeying as he at once obeys commissions issued by virtue of the said superior decree, he ordered that, the party interested being previously summoned, in company with two individuals to my satisfaction who serve as assisting witnesses in these proceedings, I shall proceed immediately to make said measurements, proceeding for the purpose to said mission of Tumacacori, and for this act thus I ordered and signed with the assisting witnesses, acting with the same for want of a notary public on this 13th day of January, 1807.

Wherefore I, the commissioner, Don Manuel de Leon, Juan Legarro, governor of the mission of Tumacacori, and the other Indians being present, I made known to them the foregoing act, whereupon, understanding the same, they said that they acknowledged and signed with me and the assisting witnesses.

MANUEL DE LEON.

Assistant: YOREBIO ALEXO.

Assistant: JUAN NEPONUSENO GONZALES.

At the mission of San Joseph Tamacacori, on the 13th day of the month and year aforesaid; I, said commandant and surveyor commissioner, inquired what individuals were owners of land adjoining the lands of the pueblo of Tumacacori, as that by the citation of the same and by their appearance the measurements might be proceeded with, and being informed by various ancient residents of the presidio of Tubac and of the said mission that there was no colindante in any direction save at the presidio of Tubac, distant one league from said mission, I ordered the same to be included in the proceedings, signing the same with the assisting witnesses.

MANUEL DE LEON.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

434 At the said mission Tumacacori, on the said day, month, and year, I, the said judge, commissioner, Don Manuel de

Leon, veteran ensign and present commandant of Tubac, for the purpose of making the measurements of said mission of Tumacacori, as well of the agricultural lands as of pasture lands, I proceeded to the appointment of persons of sufficient intelligence for this purpose, appointing as a counter Leorenzo Berdiego; as measurers, Jose Miguel Soto Mayor, Juan Estavani Romero, and as tally-keepers Leon Osorio and Ramon Rios, residents of the presidio of Tubac, excepting the last-mentioned one, who is a resident of Tumacacori, who being present before me, they, the said counter, measurers, and tally-keepers, were notified respectively of their appointments, whereupon they said they accepted the same, and promised to perform their duties as such officers well, faithfully, and legally, without deceit, fraud, or malice, and to the best of their knowledge and ability, under the sanctity of an oath, which they received in due form of law, which all and each one made by God our Lord and the sign of the holy cross, the solemnity of which they understood as well as the obligations of their respective offices.

In witness whereof I made this entry in the proceedings, which is signed Jose Miguel Soto Mayor, for himself, and in the name of the said officers appointed, who cannot write, I sign the same in the ordinary form with the assisting witnesses.

MANUEL DE LEON.

JOSE MIGUEL SOTO MAYOR.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

At the mission of San Jose of Tumacacori, on the 14th day of the month of January, 1807, I, the said judge, commissioner, surveyor, Don Manuel de Leon, veteran ensign and actual commandant of Tubac, having proceeded to said mission in company with the officers appointed, the counter, measurers, and markers, and by the said assisting witnesses and five other residents, who,
 435 being armed, accompanied us as an escort, for the purpose of commencing the measurement of the lands pertaining to said mission, as well as for a "fundo legal" belonging to it as a mission, as also for an "estancia" (stock rancho) for the raising of large and small stock, I ordered said governor, Juan Legarro, and the other Indians of the mission to proceed to point out the centre, who, giving me to understand that during the times Senor Pineda was governor of these provinces it was agreed that the lands should be divided, leaving to the natives of this mission the lower part of the valley towards the north, his honor giving them power to take what might be lacking on this account in whatever direction might be most desirable, wherefore the cross in the burying ground in said mission was fixed upon as the centre, the measurements of the lands as asked for to commence at said cross.

It witness whereof I sign with the assisting witnesses.

MANUEL DE LEON.

Assistant: TORIBIO DE OTERO.

Assistant: NEPOMUSENO GONZALES.

At the said mission of San Jose de Tumacacori, on the 14th day of January, 1807, I, Don Manuel de Leon, veteran ensign and actual commandant of the presidio of Tubac, judge surveyor, commissioned for the measurement of these lands by the senior brigadier, Don Alejo Garcia Conde, governor intendente, political and military judge and judge privativo of the lands of these provinces of Sonora, &c., Juan Legarro and the other Indians composing the mission of Tumacacori being present, together with the officers, the counter, Lorenzo Berdego, the measurers, Juan Estevano Romero, Leon Osorio, and Ramon Rios, and the undersigned, assisting witnesses, I order- the said counter to measure, as he punctually did measure, a
 436 cord, well twisted and greased, which I had brought for the purpose, of fifty varas, castalian, of the usual measure of four palms, measuring the same with a vara properly regulated and marked, which I had brought for the purpose, the said cord having a stick of hard wood attached to each end, which cord was by me delivered to the said measurers, with whom and the other parties mentioned I went to the said place of the burying ground, and, being in front of the cross, the point fixed as a centre, I placed a compass, properly regulated, which I had also brought for the purpose. I took the direction of the north and down the valley, and then carefully measured and counted fifty cords, the line terminating at a point in front of the devisadero lookout hill, which point stands between the point where you reach the valley and two very large alamos, cottonwood, standing outside of the river bed, at which point I ordered a number of stones to be placed as a sign for a landmark, which was done, proceeding no further in this direction, because the boundaries of the presidio of Tubac were reached, whereupon, returning to the centre, a direction was taken south, in which direction was measured and counted with equal care three hundred and thirty-two cords, the line terminating on the upper side adjoining the gulch close to the place called Calabazas. From this point returning to the centre, there was carefully measured towards the east seven cords from the river bed, the line terminating
 hillock

at the foot of the hill within a mesquite grove, at which place I ordered a mound of stones to be placed as a sign for a landmark, and it was so placed, and, having measured in this direction seven cords, we returned to the centre, taking the direction west, where was measured and counted with equal care eleven cords, the line terminating upon a long sloping hill (tendida), upon which stands the place called the "mesquite seco," at which point I ordered another mound of stones to be placed as a sign for a landmark, and it was so placed, whereupon the measurements were entirely concluded of the lands pertaining to said mission as a "fundo legal" and lands for cultivation.

437 No other agricultural — being found in all the valley or in its neighborhood, and taking some cords of the barren lands in the direction of the east and west, all the said measurements being made to the satisfaction of the officers engaged in making the same and of the interested parties, Juan Legarro, gov-

error, and the other natives of the mission, whereupon the said proceedings were concluded, the measurer signing for himself and in the name of the other officers and governor of the mission, who could not write, with me, the said judge, surveyor, commissioner, and the assisting witnesses, acting in the ordinary form.

MANUEL DE LEON.

JOSE MIGUEL SOTO, *Mayor*.

Assistant: TORIBIO OTERO.

Assistant: JUAN NEPOMUNSENO GONZALES.

On the said 14th day of January, 1807, I, Don Manuel de Leon, veteran ensign and actual commandant of the presidio of Tubac, judge, commissioner, and surveyor, in prosecution of the measurements of the lands for the estancia (stock rancho), as directed by the senior brigadier governor intendente of the province of Sonora, the officers and other parties being present, I asked them if they desired to postpone the measurement until the following day, to which they replied that, since their time was valuable and being then all together, they preferred to continue operations as long as the day lasted, whereupon I ordered the governor, Juan Legarro, that, after consulting with los hijos (the sons), he should proceed to point out the place desired as the centre of the land for the stock rancho or estancia, who designated the place Guebabi, including the mouth of the potrero, this appearing most suitable for the purpose designed, as also because it had been a pueblo pertaining to this mission, where it had always kept the stock.

Whereupon the meadow by the riverside was taken as a centre, at which point I ordered a mound of stones to be placed, and
438 it was instantly placed, to mark the central point for the commencement of the measurement in accordance with what had been granted by the senior brigadier, Don Alejo Garcia Conde, governor, intendente, and judge privativo of the lands of these provinces of Sonora, by decree of the 17th day of December, 1806.

In witness whereof I sign with the assisting witnesses.

MANUEL LEON.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

On the 14th day of January, 1807, I, the said Manuel de Leon, veteran ensign and commandant of the presidio of Tubac, in company with the officers appointed, the governor of Tumacacori and his Indians, the assisting, &c., being at the initial point designated of their land, and placing a compass, properly adjusted, a direction was taken to the north, in which direction was measured eighty cords, which was carefully measured and counted, the line terminating at the same monument fixed to the agricultural lands, the same being in one body.

Whereupon, returning to the centre, the direction was taken to the south, in which direction were measured and counted with equal care fifty-five cords, the line terminating on the very slope which descends into the lowland or water-course that runs towards

the vado seco (dry ford or crossing), where I ordered another mound of stones to be placed as a sign for a landmark, and it was so placed, and, the night coming on, I ordered the measurement to be suspended, to be continued in the morning.

In witness whereof, making this entry in the proceedings, the measurer signing for himself and in the name of the other officers and the interested parties who could not write, with me, the said commissioner, acting in the ordinary form with the assisting witnesses.

MANUEL DE LEON.
JOSE MIGUEL DE SOTO, *Mayor*.

Assistant: TORIBIO OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

439 In the ancient and deserted pueblo or mission of Guebabi, on the 15th day of the said month and year, I, the said judge, commissioner, and surveyor, Don Manuel de Leon, accompanied by the officials appointed for the purposes, the parties interested, as the centre of those lands, and placing a compass, properly regulated, a direction was taken to the east, in which direction was carefully counted and measured twenty-seven cords, the line terminating at a hill (serro), and it being impossible to proceed further in this direction on account of the ruggedness of the country, whereupon the parties interested asked me to give them the remainder of the cords in the direction of the potrero, which was on the west, and, consenting to their request as reasonable, I ordered to be placed and there was placed at the foot of said hill (serro) of San Cayetana, on the side looking towards south, another mound of stone as a sign for a landmark; whereupon, returning with all the parties mentioned in these proceedings to the initial point, a direction was taken to the west, in which direction were measured carefully and counted thirty-eight cords, the line terminating on the slope of the highest hill seen from the potrero, at which point I ordered to be placed and there was placed another mound of stones; whereupon the measurements were concluded as well of the agricultural lands as of the two sitios of estancia (stock rancho), to the satisfaction of the officers; whereupon these proceedings were concluded and the same was signed by the said measurer for himself and in the name of the officers and interested parties who could not write, and the same was also signed by me, the said judge, surveyor, and commissioner, and the assisting witnesses, with whom I act in the absence of a notary public, in due form of law.

MANUEL DE LEON.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

440 At the presidio of Tubac, on the said day, month, and year, I, the said judge, Commissioner Don Manuel de Leon, veteran ensign and actual commandant of the company of Tubac, in view of having fulfilled the commission conferred on me by decree of the 17th of December, 1806, issued by the senior brigadier,

governor intendente, political and military judge, privativo of the lands of these provinces, Don Alejo Garcia Conde, in continuation of these proceedings, ordered that the originals thereof, with citation, be transmitted through the interested parties in this condition to the said superior authority, in compliance with the order of the same, to the end that, in view of the same, his honor may determine what might be necessary.

Thus provided, ordered, and signed, with the assisting witnesses in the ordinary form.

MANUEL DE LEON.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

On this, the date of the above date, January 17th, 1807, these proceedings, contained in nine folios, *was* delivered to the interested parties, Juan Legarro, governor of the mission of Tumacacori, and the Indians of said mission.

In witness whereof I make this entry, which is signed with a rubrica.

To the senor commandante, Don Manuel de Leon :

I, Juan Legarro, governor of the mission of Tumacacori, for myself and in representation of all the community of this mission, appear before your honor, through this petition, and say that this our pueblo being without papers or instruments in relation to lands which by the lapse of time had been lost, and I clearly and evidently knowing this *this* mission in the direction of Guebabi is bounded by the rancho of Romero, the monuments of which
 441 still exist beyond the Yerba Buena, at which place also exists a corral in which rodeos were held by our mission and on the potrero side, the measurement reaching to the end of the marsh (cienega), and learning from Don Manuel Carrera that the papers had been in his possession, and that these sitios had been in years anterior purchased with the money of the common fund of the mission and natives; which papers have not made their appearance :

Wherefore, for the purpose of justifying before the senor governor, military and political intendente of the royal treasury, and judge privativo of the lands of these provinces, the right we have to said lands which we claim as propios (property), and those that we need at present in consideration of the increase of the stock of our mission, which in times past was few in number, for which reason we did not make this claim.

We pray your excellency to be pleased to hear us and proceed to take the sworn testimony of the Romero, Apodacas, Baes, and other old residents, who are acquainted with the facts stated to you.

At the request of the governor and natives of the mission of Tumacacori.

FRAY NARCISCO GUTIERRIEZ.

Tumacacori, December 23rd, 1806.

Don Manuel de Leon, ensign of cavalry and commandant of the presidio of Tubac, in view of the foregoing petition and concerning the same as presented in due form of law, in virtue of the same, I proceeded to take the sworn declaration in due form of the parties named below.

At the presidio of Tubac, on the 24th day of the month of December, I, the said commandant, Don Manuel de Leon, caused to appear before me and the assisting witnesses Juan Nepomuseno Apodaca, a resident of Santa Cruz, to whom I explained the nature of an oath, to which he replied that he knew what an oath was, and he
442 promised by God our Lord and the sign of the holy cross that he would true answers make to such questions as might be asked of him as far as he might know.

Question. If he knew the boundaries or monuments in the direction of the south, as also in the other directions.

Answer. On the side of the south, or where Guebabi is situated, said mission of Tumacacori is bounded by the rancho of the Romero; that the witness is interested in the rancho of the Romero, and that he knows that at present exist the monuments which divide the lands of Tumacacori and the Romero, said monuments being placed beyond the place called Yerba Buena, and that in the direction of the potrero he knows and swears that said monuments were placed above the large marsh (cienega grande), and that in the direction of the east the monuments were placed at the cañon of Sonoita, upon a gradually sloping mesa.

Question. As to where he acquired his information. He replied that he knew it because he had been present at the rodeos of said mission and had heard the ministero of said mission say so, and he had heard the late Manuel de la Carrera say that if any doubt should arise as to the lands of said mission—these of the interested parties, those of the Romero, Santa Barbara, and other places situated in the direction of Guebabi or in the valley of the potrero—that if they would come to his house they would find the documents necessary.

To the question as to his opportunity of swearing to what he had affirmed in relation to the citizen Manuel de la Carrera he replied that he had heard him speak in relation to the matter, and he knew he had been judge for many years and collected all the papers in relation to the land and sitios and took them with him.

Question. If he had anything further to state in relation to the matter. He said he had nothing more to say; that he was seventy years of age; and, not knowing how to write, he made a sign of the cross.

443 And for the necessary ends I signed with the assisting witnesses, with whom I act in the absence of a notary public.

MANUEL DE LEON.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

On the 7th day of January, 1807, I, the said Manuel de Leon, political judge and commandant of the presidio of Tubac, caused to appear before me and the assisting witnesses Juan Bantista Romero, sergeant of the company of the presidio of Tucson and a resident of this presidio as havilitado, to whom I explained the nature of an oath and the harm that would result from swearing falsely, to which he answered that he knew his obligations under an oath, and he promised to speak the truth.

Question. If he knew the boundaries of Tumacacori. He replied he did, since childhood; that his late father took him as a child and told him that the mission of Tumacacori was bounded by the ranch of Buena Vista, belonging to them (that is, the declarant and his father), and that the landmarks of the Tumacacori are situated above the Yerba Buena, and that Don Manuel Carrera, as political judge of this jurisdiction, assured me that he had in his possession papers in relation to this place and other places in the neighborhood.

Question. If he had anything else to say. He replied that he had nothing further to say; that he was confident as to what he had stated.

And, for the end that may be necessary, I signed this in the absence of a notary public, with assisting witnesses.

MANUEL DE LEON.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

On the 9th day of January, 1807, I, said Don Manuel de Leon, political judge and commandant of Tubac, caused to appear before me Pedro Baes, resident of the presidio of Tucson, to whom
444 I explained the nature of an oath; whereupon he promised to speak the truth in answer to such questions as might be asked him.

Question. If he knew the boundaries of Tumacacori. He answered that the mission of Tumacacori on the south was bounded by the rancho of Buenavista, a ranch belonging to the Romeros, the monuments of which bound the lands of the Romeros near the said mission, and that the landmarks of the mission still exist, although thrown down above the Yerba Buena; that said witness was raised on said rancho of the Romeros, and that the mission held its rodeos on the boundaries of the Yerba Buena, the remains of which are still seen where the Romeros used to come to the rodeos so as to take out their cattle, and as it is well known these lands were purchased by the mission, and that the Corporal Eugenio, whom he raised, and who was corporal of Tucson, and had been taught to read from the documents relating to the title which had been placed in his hands and which he had read; that on the side of the potrero the measurements reached as far as the Pajarito, above the large marsh (cienega grande) where the monuments were placed, and on the south as far as the cajon of Sonoita, upon a very "tendida," gradually sloping hill.

In witness whereof I sign with the assisting witnesses, he saying that he was eighty years of age.

MANUEL DE LEON.

Assistant: TORIBIO DE OTERO.

Assistant: JUAN NEPOMUSENO GONZALES.

To the senior governor intendente and judge privativo of lands, Juan Legarro, governor of the Indians of the pueblo of Tumacacori, situated in the district of Pimaria Alta:

Felipe Mendoza, Jno. Ignacio Arrola, Ramon Pamplina, and Javier Ignacio de Madrid, principal natives of the pueblo, for themselves and in the name of and in representation of the community of the natives of said republic, before your honor, in due
445 form of law, through this petition, appear and say that the measurements of lands belonging to said pueblo as a "fundo legal" and as "estancia" being concluded, as shown by the proceedings taken by the commandant and political judge of the military post of Tubac, Don Manuel de Leon, by virtue of the superior decree which your honor was pleased to issue on the 17th day of December last, as is shown by the annexed expediente, containing nine written folios, with all the solemnity, present ourselves. The said measurements having been made in accordance with the sovereign decrees in relation to such matters, and having also produced before the official commissioner the judicial proof, which is set forth in three written folios, by which is sufficiently set forth the right of property which we have to the lands, which lie on the south and the ancient pueblo of Guebabi are bounded by the rancho of the Romero and beyond the place called Yerba Buena, and on the north and the valley of the potrero as far as the upper end of the large marsh (la cienega grande); on the side of the east as far as the cajon of Sonoita; which lands and places belong to us by legal, public, and judicial purchase from their primitive and legitimate owners, and that since the time of the Jesuits our said mission of Tumacacori possessed the same as a "fundo," all of which is shown by the respective instruments of sale and transfer executed before the legitimate authority by those ancient owners; which documents were in possession of Don Manuel Fernandez de la Carrera, and since the decease of said individual they do not know where said documents are to be found. The legality, that the same were acquired legally by real sale and by purchase by the mission, as is duly shown by the accompanying judicial testimony, which, at our request, has been taken by the said commandant and political judge of Tubac. In consideration of which we earnestly pray your honor to be pleased to order to be issued in favor
446 of our said mission the corresponding title or instrument which in due form in all time will show the said measurement and adjudication of lands belonging to us, as well as a "fundo legal" of our pueblo and its respective "estancia," as also the sitios belonging to us by purchase in the time of the primitive missionaries, which is shown by the annexed testimony, and, it being manifest in the constant increase of our stock the land

measured to us for "estancia" by the commissioner is not sufficient, we protest formally that we will confine ourselves always to all the boundaries of the said lands as our own by virtue of the legitimate right we have to the same under the title of this superior judge privativo, since what we ask is just and in which we will receive grace and favor, and besides being in accordance with what is provided by his majesty in the royal instructions which govern the matter, swearing in our favor that we do not proceed in malice, and whatever is necessary.

At the request of the parties present.

IGNACIO DIAZ DEL CARPIO.

ARIZPE, *March 18th, 1807.*

The foregoing petition being presented and admitted, let the same be annexed to the expediente and report accompanying, and let the same be passed to the assessor attorney general, the senor intendente and judge privativo of lands of these provinces. This decree ordered and signed.

GARCIA CONDE.

To the senor governor intendente, at the request of Juan Legarro, as governor of the pueblo of Tumacacori in La Pimaria Alta, for himself and all the community of that republic, there have been measured to the same, by virtue of the decree of your honor of the 11th of December last, the four leagues belonging to the pueblo as a fundo, and besides an estancia (stock rancho), all in accordance with the laws and instructions which govern such matters in this province.

447 The said natives not being contented with said measurement, they ask that there be adjudicated to them the lands occupied heretofore by the abandoned pueblo of Calabasas, the dimensions of which are shown by the testimony taken before the commandante and the political judge of Tubac, at the request of said Indians, and are included within the boundaries therein mentioned.

The stock, cattle, and horses of Tumacacori are increasing each day by the industry of the natives under the direction of the present minister, Rev. Father Fray Narciso Gutierrez.

Whereof the whole of said land is considered necessary for the preservation of said stock.

I am of the opinion that your excellency may approve said measurement and adjudicate to that pueblo the lands contained therein as a fundo legal and those contained within the boundary of Calabasas, all without prejudice to third parties who may have a better right, and under the condition that if the said pueblo, which is now abandoned, should again be settled that its lands shall be restored, and that your honor issue a title in due form to these natives for the protection of their rights. Your honor will, however, determine what is proper in the premises.

LICENCIADO TRESIERRA.

Arizpe, March 30th, 1807.

In the city of Arizpe, on the 31st day of the month of March, 1807, the Senor Don Alejo Garcia Conde, brigadier of the royal armies, governor political and military intendente of the royal treasury, and judge privativo of sales, compositions, and distribution of lands of the provinces of Sonora and Sinaloa, by his majesty (whom God preserve). In view of the foregoing proceedings instituted for the marking out and assignments of the lands which belong to the mission of Tumacacori as a fundo legal of their pueblo and for estancia of the same, and reports showing the lands which, 448 besides those, they have acquired by purchase and which legitimately belong to the natives of the mission, together with the opinion of the intendencia and governor, as has been set forth.

His honor said that, in conformity with the opinion of the Lieutenant Letrada (learned) (in accordance with the surveyor and superior orders in relation to the matter), the said proceedings of measurements and testimony taken by the present commandant and political and military judge of Tubac, Ensign Don Manuel de Leon, adjudication is made in due form to the said pueblo and natives of Tumacacori of the said lands referred to in the expediente, so that as their own property, legally acquired both as a "fundo legal" of the pueblo and estancia, which they need and which belong to them, they shall enjoy the use and freely possess at will and for their own benefit, in community and individually, and for the decent support of the church of said mission, but under the condition that in no case and in no manner shall they alienate at any time any part of said lands which are adjudicated and assigned to them, since they are always to be considered as belonging to the republic and community of natives alone for their proper use, as well as for sowing purposes as for stock-raising and the increased prosperity of the same, and under the express condition also that whenever the ancient and deserted pueblo of that mission named Calabasas may be resettled the lands that legitimately belonging thereto shall be restored to the same, and that the present adjudication is particularly understood to be without prejudice to third parties who may have a better right to the same, and who may legally and formally present the same. In conformity with which his honor ordered to be issued by this intendencia and juzgado privativo the corresponding title in ordinary form in favor of the said natives of said pueblo for their security in all time and 449 for the other uses and ends that may be necessary, and that this decree will be made known to the parties interested.

Thus provided, ordered, and signed before the undersigned witnesses, with whom I act in the absence of a notary public, according to law.

ALEJO GARCIA CONDE.

Assistants: RAMON MENDOZA.

JOSE DE BERROTORAN.

Whereupon appearing in this juzgado the citizen Ignacio Diaz de Corpio, as the agent or attorney appointed in this matter by the

natives of Tumacacori, who was personally notified of the foregoing decree, which he understood, signing the same with his honor and the assisting witnesses.

GARCIA CONDE.
IGNACIO DIAZ CARPIO.

Assistant: RAMON MENDOZA.

Assistant: JOSE DE BERROTORAN.

Whereupon, by virtue of authority conferred by article 81 of the royal ordenanza and instructions to intendentes and in conformity with what is set forth in the royal cedula in relation to this matter on the 15th of October, 1754, referred to in said article, by these presents, in the name of his majesty, whom God preserve, I confer a formal grant and adjudication of lands for agriculture and for the pasturage of cattle, horses, mules that are set forth and described in the foregoing proceedings of measurement and the testimony to the community of Indians of Tumacacori, situated in the district of Pimeria Alta, in the jurisdiction of the military post of Tubac, which said agricultural lands and those for grazing purposes I concede, give, and adjudicate to the said natives, their children, heirs, and successors, with all its entrances, exits, uses, customs, servitudes, woods, pastures, springs, watering places thereto belonging, including within the measurement, demarkation, and boundaries, as set forth in the first proceedings, to which the grantees shall be strictly subjected, they, the said Indians of the said pueblo of Tumacacori, not to exceed the boundaries as set forth or to occupy other land than what is adjudicated to them by this title, under the following express conditions:

1. That the survey and adjudication of lands is to be understood to be without prejudice to any party who may have a better right to the same and who may present the same in due form.

2. That whenever the deserted pueblo of Calababas (which pertains to the mission of Tumacacori) may be resettled the lands corresponding to the same as a fundo legal of the pueblo and stock ranch shall be restored by the natives of Tumacacori.

3. And, last, that the interested parties are to keep the said lands occupied by cultivation and keeping stock thereon, doing all in their power for the advancement of these branches of industry, so that said lands shall not at any time be entirely abandoned or unoccupied, under the penalty that if for the space of three years they are totally abandoned they may be granted to any person who may demand them.

And I strictly order and command the present commandant and political judge of said pueblo of Tubac and to others in his employ not to permit the said natives of Tumacacori for any motive or cause or under pretense to be molested, prejudiced, or disturbed in the free use and dominion of said lands, but, on the contrary, they shall take care that they be protected in the quiet and peaceable possession of the same, requiring also that the community of Indians shall construct and maintain firm monuments of rough stone and lime of the necessary height and thickness, which shall in all time designate

the boundaries of said lands with the colindantes and the vacant lands.

Wherefore and in conformity with and in consequence of what has been determined by me and decree of the 31st of last
451 March, which is inserted, I issue the present title of adjudication, grant, and confirm in due form in favor of said Indians the community of their Republic of Tumacacori.

Let the necessary registry be made in the corresponding book and let the original title be delivered to the interested parties for their security, and that in all time it may serve them as a justifying document of the right of property which they legitimately have in said land.

Given in the city of Arizpe on the 2nd day of April, 1807.

Authorized and signed by my hand and sealed with the seal of my arms before the undersigned and assisting witnesses, with whom I act in the absence of a notary public, according to law.

ALEJO GARCIA CONDE. [SEAL.]

Assistants: RAMON MENDOZA.

[RUBRICA.]

JOSE DE BERROTORAN.

[RUBRICA.]

NOTE.—Registry: A note of this title is made on folio ten of Book No. 174, which exists in the archives of the juzgado privativo, and in witness whereof I make this entry.

Attested by the rubrica of his honor.

[RUBRICA.]

In the month of June, 1821, there was measured to Don Leon Herreras, of this vicinity, one and three-quarters square leagues in the place of San Jose Sonoyta by denouncement made before the senior commandante general of this province, Brigadier Don Antonio Cordero, he being intendente of these provinces, which measurement of said league down the cañon of said Sonoyta terminated in front of the two cerritos (little hills) which are named Quates. In this direction it is bounded by the lands of the mission of the pueblo of Tumacacori, and, in consideration of the fact that when said measurements were made, in order not to encroach on the lands granted to the said Tumacacori, they only

452 had in view the measurements made of the "fundo" and two "estancias," it was believed that, so far from encroaching on the measurements of Tumacacori, there remained a vacant space of one league, a little more or less. However, the minister of said pueblo of Tumacacori, Friar Ramon Liberos, having represented in an expediente that, besides the fundo of four leagues and the two estancias measured, more land was given to said pueblo by his excellency the Senor Don Alejo Garcia Conde in both directions, he being intendente of these provinces, and in consideration of the fact that in direction of the east there is some doubt as to the true boundary, in order to avoid difficulty and the necessity of suits the father (friar) minister, Ramon Liberos, in the name of the pueblo and Don Leon Herreras, having agreed that the line dividing these lands the one from the other shall be the upper part of the cajon of Sonoyta at the hill (loma) called "De

las Cruces," and that besides this that in all time the said Herreras may keep stock on the land pertaining to the lower part of the cajon without being prejudiced in the same, and the piece of agricultural land in the said cajon Abajo at no time shall be cultivated by any one else, except by agreement, save the Indians of the pueblo and by no other persons; to which the parties agreed before me, the Captain Don Elias Gonzales, commandant of the presidio of Tubac, also asking that the preceding be entered at the end of each of the expedientes in possession of the interested parties as a testimony in the matter.

Whereupon the parties signed with me and the assisting witnesses, in the absence of a notary public, according to law on the 10th of January, 1823.

IGNACIO ELIAS GONZALES,
For DON LEON HERRERAS.
JOSE MA. SATELO.
FRIAR RAMON LIBEROS.

Assistant: TRINIDAD YRIGOYEN.

Assistant: JOSE ANTONIO SOTELO.

453 Office of the treasury department of Sonora, 1844.

Title of sale, transfer, and adjudication of agricultural lands which include the four leagues of the fundo legal of the deserted pueblo of Tumacacori and the two sitios of its estancia (stock ranch) of Calabasas and the other places thereto annexed, the same being situated in the jurisdiction of the district of San Ignacio, issued by the said departmental treasury in compliance with the superior decree of the 10th of February, 1842, in favor of Don Francisco Alejandro Aguilar, a resident of the post and village of San Fernando de Guaymas.

Second seal. Four dollars. Years 1844, 1845.

Ignacio Lopez, captain of cavalry, retired into the infantry, intendente honorary of the army and treasury department of Sonora

Whereas the superior decree of the 10th of February, 1842, directs, in consideration of the embarrassed condition of the pueblo treasury, the sale of property pertaining to the temporalities as being of this class, the agricultural lands and the grazing lands of four leagues of the "fundo legal" of the abandoned pueblo of Tumacacori and the two sitios of the stock ranch of the same in the points of Guebabi Potrero Cerro of San Kayetano and Calabasas; the areas, boundaries, monuments, and colindantes are set forth in the corresponding proceedings; all measurements were made in the year 1807 by the commissioner and surveyor, Don Manuel de Leon, veteran ensign and commandant of the presidio of Tubac, according to the reports that have been made, at the request of this office of the departmental treasury, the said lands (temporalities) being valued at the sum of five hundred dollars, in accordance with the requirements of article

2 of the foregoing supreme decree of the 10th of February, 1842, in compliance with which the formation of the corresponding expediente was ordered through the juzgado of first instance and
454 of the treasury of the district of San Ignacio, and no bids were offered.

Wherefore, in accordance with article 73 of the law of the 17th of April, 1837, the sales being made for a sum not exceeding five hundred dollars on account of the national treasury, the treasurer's office proceeded to offer at public sale the lands of the abandoned pueblo of Tumacacori and the lands of its "estancia" (stock ranch) of Calabasas and the place thereunto belonging, all appertaining to the temporalities, on the 16th, 17th, and 18th of the current month of April, asking bidders for the same. Whereupon no one appeared except the Senor Don Francisco Alejandro Aguilar, of this post and village of San Fernando de Guaymas, who offered the said sum of five hundred dollars, the sum at which the same was valued, as is shown at the last offer of sale, which is as follows:

Third seal. One dollar. Years 1844 and 1845.

At the post and village of San Fernando de Guaymas, on the 18th of April, 1844, I, the undersigned, treasurer of the department, being at the office of the treasury under my charge with the assisting witnesses, Don Jose Maria Mendoza and Don Vincente Yrigoyen, in the absence of a notary public, in compliance with article 73 of the law of the 17th of April, 1837, since the price or valuation of the temporalities referred to in these proceedings does not exceed the sum of five hundred dollars, I offered the third and last offer of lands to be made at auction of the lands "de temporalities" of Tumacacori and Calabasas referred to in the expediente; whereupon, at the sound of the drum, the auctioneer, Florentio Baldizan, did say in a clear and loud voice, saying: The departmental treasury is going to sell, on account of the national treasury, in accordance with the supreme decree of the 10th of February, 1842, the agricultural lands and the grazing lands for cattle and horses included
455 in the four leagues of the "fundo legal" of the deserted pueblo of Tumacacori and the two "sitios" of the "estancia" (stock ranch) of the same, which desert at the places of Guivave Potrero Cerro de San Cayetano and Calabasas, situated in the district of San Ygnacio, the areas, monuments, boundaries, and colindantes of which are set forth in the corresponding proceedings of measurements made in the year 1807 by the commissioner, Surveyor Don Manuel de Leon, veteran commandant at the time of the presidio of Tubac, as is shown by the report made at the instance of the departmental treasury, it being also shown by the same that the original title of the grant and confirmation of the said temporalities still exist, which lands have now been valued at the sum of five hundred dollars, in accordance with article 2 of the said superior decree of the 10th of February, 1842.

Whoever may desire to bid let him do so before the departmental treasury and his bid will be heard in accordance with law, with the understanding that the sale is now to be made to whoever may be

the best bidder. Whereupon Don Francisco Alejandro Aguilar, of this post, appeared and bid the sum of five hundred dollars, at which the said temporalities were valued, and, there being no other bidder and the hour of twelve o'clock of the day having arrived, the last offer was made one, twice, three times, going, going, gone; sold to Senor Don Francisco Alejandro Aguilar.

Whereupon said act was concluded, the said agricultural lands and grazing lands of the deserted fundo and estancia de temporalities of Tumacacori and Calabasas being publicly and solemnly sold to Don Francisco Alejandro Aguilar, of the vicinity of this post, for the sum of five hundred dollars.

In witness whereof and for the necessary ends these proceedings are closed and signed by me, the interested party, and the assisting witnesses.

IGNACIO LOPEZ.

FRANCISCO A. AGUILAR.

Assistant: JOSE MARIA MENDOZA.

Assistant: VINCENT YRIGOYEN.

456 In which legal terms was concluded the sale of the agricultural lands and the lands for the pasturage of stock included in the four leagues of the deserted "fundo" of Tumacacori and the two sitios of the "estancia" (stock ranch) of Calabasas and the other places thereto, all being the temporalities.

The original expediente remains on file in the archives of the office of the treasury as a perpetual testimony in relation to the matter, it being observed that when the original titles of Tumacacori and Calabasas are received they shall be annexed to those proceedings. Wherefore the agricultural lands and the grazing lands included in the four leagues of the fundo of the deserted pueblo of Tumacacori and the two sitios of its estancia of Calabasas and the other places pertaining thereunto, all of temporalities in the jurisdiction of the district of San Ignacio, having been sold to Don Francisco Alejandro Aguilar, a resident of the post, for the sum of five hundred dollars, which sum, together with the taxes pertaining thereto, has been delivered in this office of the departmental treasury; in consequence whereof, by virtue of the authority conceded to me by the laws in relation to the matter, as also by the superior decree of the 10th of February, 1842, by the present title and in the name of the Mexican nation and of the superior government, I concede, sell, give, and adjudicate in due form the said lands for agriculture and the grazing lands including in the four square leagues of the deserted pueblo of Tumacacori and the two sitios for estancia (stock ranch) of Calabasas, with the places pertaining thereto, to the said purchaser, Don Francisco Alejandro Aguilar, as a sale and with all the firmness and solemnity required by law, for himself, his children, his heirs and successors, with all its entrances, exits, lands, circumferences, waters, springs, watering places, uses, customs, servitudes, and other things thereunto
457 pertaining within its boundaries for the said sum of five hundred dollars, for which the same has been sold to the

said Don Francisco Alejandro Aguilar under the precise conditions that this purchaser and his successors are required to enter into possession, settle upon, cultivate, and occupy the said agricultural lands and the said grazing lands included in the four leagues of the deserted "fundo" of Tumacacori and the two sitios of its estancia of Calabasas without going beyond the boundaries of the same or allowing the same to be entirely abandoned, with the understanding that if the same should be totally abandoned for the period of three consecutive years from the neglect and fault of the owners and possessors, and the same shall be denounced by any person in that event after the necessary proceedings the same shall be declared vacant and be sold at public auction, on account of the national treasury, to whoever may be the highest bidder, excepting, as in just, such cases as that the abandonment has been on account of a notorious invasion by the enemies or on account of epidemics or other similar causes and for only such time or times as such causes may exist, requiring, as if strictly required, the Senor Don Francisco Alejandro Aguilar and his successors to subject themselves to the appurtenances, extent, and boundaries of the said lands of the fundo Tumacacori and its estancia of Calabasas, maintaining on said possessions the necessary monuments of rough stone and lime under the penalty established by the laws in case of neglect of the same, and by the authority which they and other superior dispositions concede to me I order and require, respectively, the judge, justices, and local authorities now existing and such as may hereafter exist in the district of San Ignacio that in the prompt administration of justice and in observance of the said legal disposition they shall not permit the said Senor Don Francisco Alejandro

458 Aguilar or his successors to be disturbed or molested in the free use, exercise, ownership, dominion, and possession of the said agricultural lands and grazing lands of the fundo of Tumacacori and "estancia" of Calabasas; but, on the contrary, they shall take care that they always be protected and maintained in the quiet and peaceable possession to which they are entitled under the law, so that they may freely enjoy, possess, sell, exchange, donate, transfer, give as a legacy, cede, and alienate the said agricultural lands and grazing lands of the four leagues of the fundo of Tumacacori and of the two sitios of its estancia of Calabasas and the other places pertaining thereto, at their free will and election, as absolute owners of said possessions, it being observed that as soon as the original titles of said lands may be obtained they shall be annexed to this document, since from this time it is considered that said primitive documents are in fact transferred and delivered to the interested party, Don Francisco Alejandro Aguilar, in which terms this title of sale, transfer, and adjudication is issued in due form to the said Senor Aguilar, his heirs and successors, delivering him the first for his security and other uses that may be necessary, previously making registry thereof in the corresponding book.

Given at the post and village of San Fernando de Guaymas on the 19th day of the month of April, 1844, authorized and signed by

me, the departmental treasurer, sealed with the seal of this office of the treasury, before the undersigned assisting witnesses, in the absence of a notary public, according to law.

IGNACIO LOPEZ. [SEAL.]

Assistant: JOSE MENDOZA.

Assistant: JOSE DIEGO LABANDERO.

Filed in the office of the clerk court of private land claims Jan. 15, 1894.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

(Here follow photographs marked pp. 459 to 464, incl.)

465

(EXHIBIT E.)

PORT OF GUAYMAS, *March 31st, 1856.*

Before me, Pedro de Valios, judge of the 2d inst. of the district, appeared today Mr. D. Francisco A. Aguilar, of this city, exhibiting the present title, consisting of 39 written sheets, which proves his rights, acquired legally and legitimately, to the lands and which therein are expressed, which he has made over to Mr. Manuel Maria Gandara, with the same rights and concessions that he himself had received from the general treasury of the State, that he may have power, as absolute owner and proprietor thereof, to dispose of them as might best suit his convenience or interests. Thus I certify that he executed the document and signed it in my presence and that of the witnesses.

P. DE VALOIS.
F. A. AGUILAR.

Witnesses:

QUIRINO ROSAS.

LORENZO POMPA.

JESUS GONZALES MENESES,

National and Public Secretary (Notary),

Resident of this City.

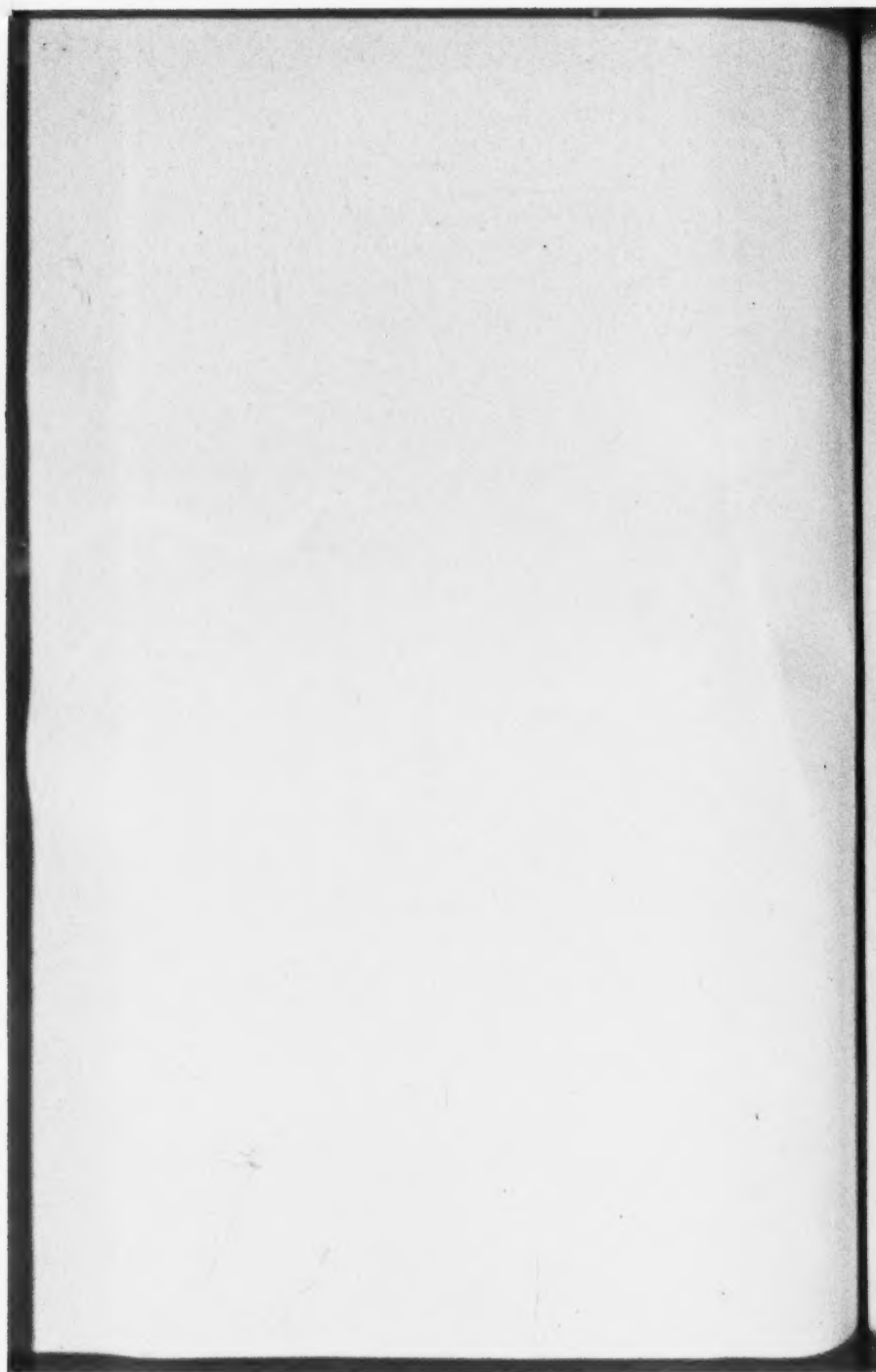
I certify with all the power of law that the signature with which is provided the foregoing deed of transfer and which is "P. de Valois" is the signature of the said judge who at the time was judge of the 1st instance of Guaymas, as he states, and that it is the same signature which he habitually uses in all his business, public and private, and that as such it is to be considered of good faith and credit in judicial business and otherwise.

In witness whereof I thus certify and sign this certificate, in the city of Hermosillo, State of Sonora, in the Republic of Mexico, on the tenth day of October, one thousand eight hundred and sixty-one.

[RUBRICA.]

JESUS MENESES,
E. N'ly P. (National & Public Notary).





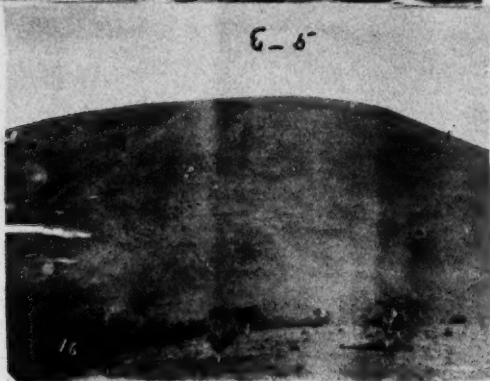
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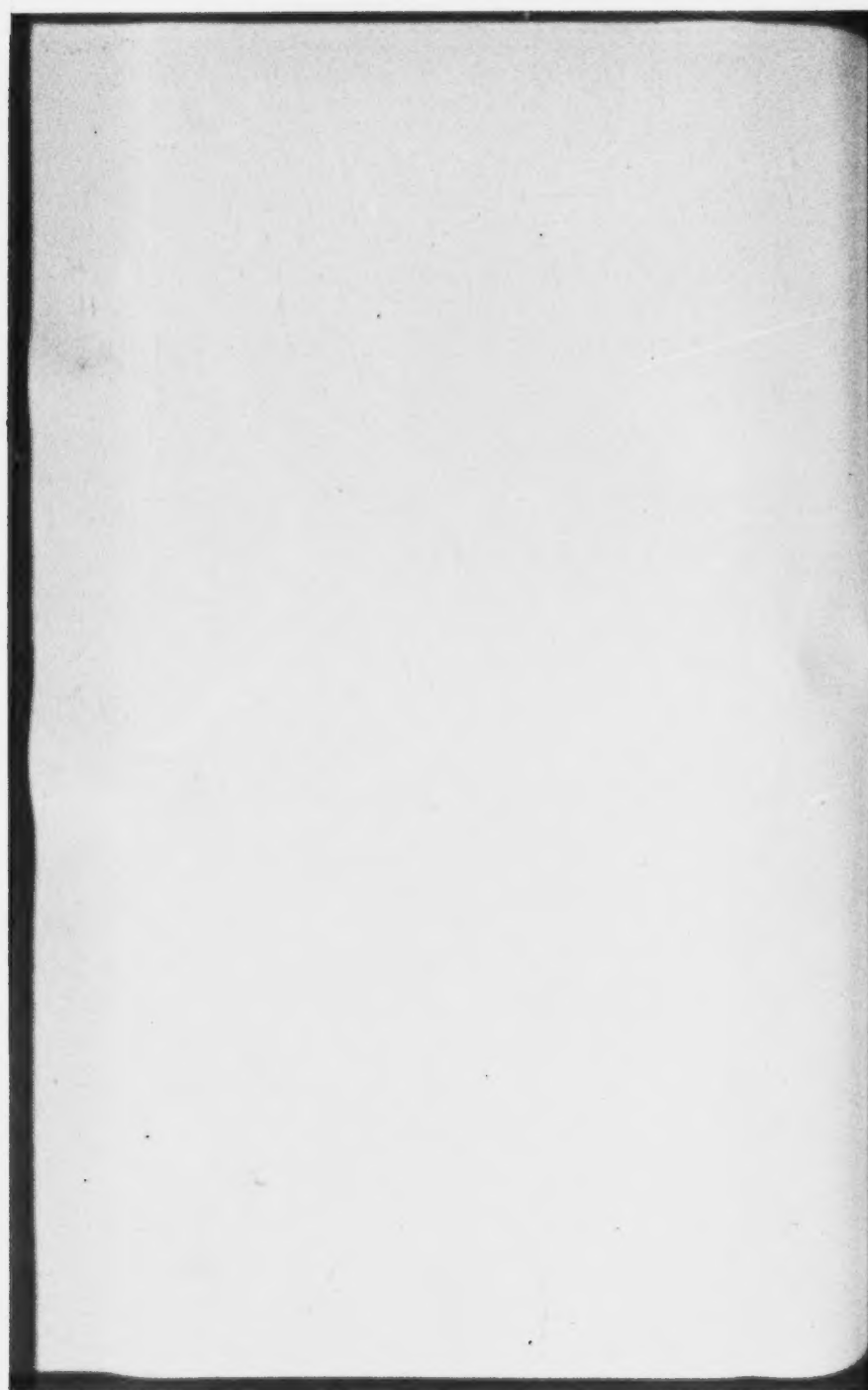


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F-5-



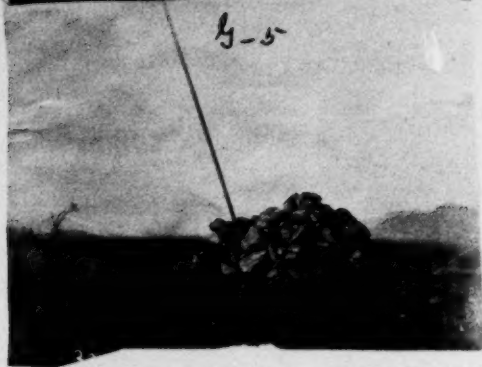


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871



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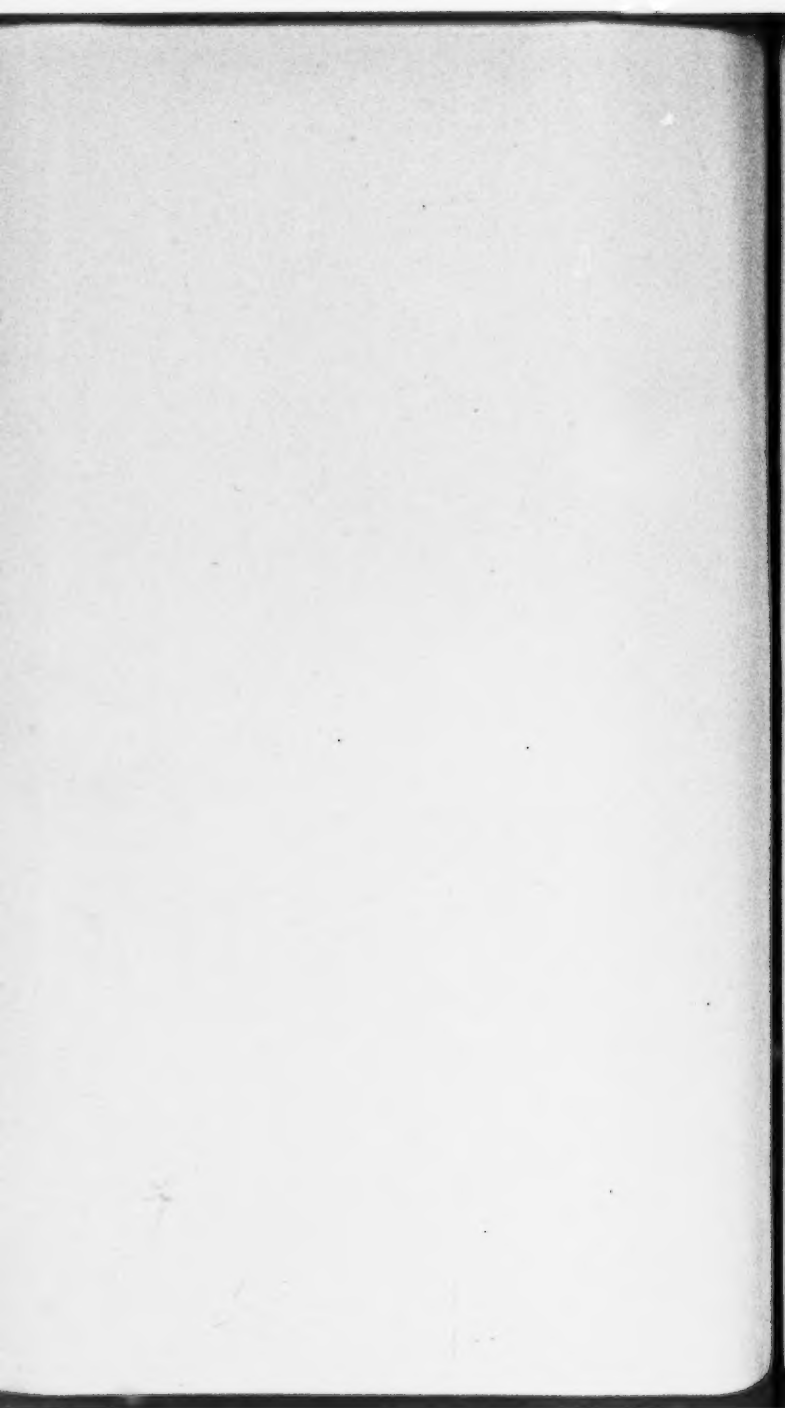


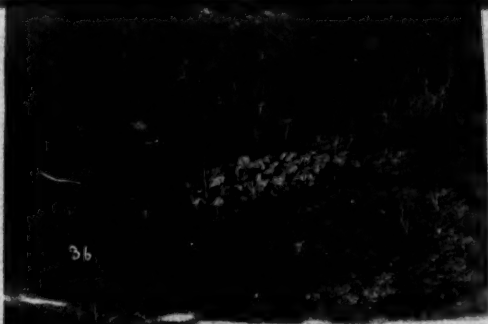
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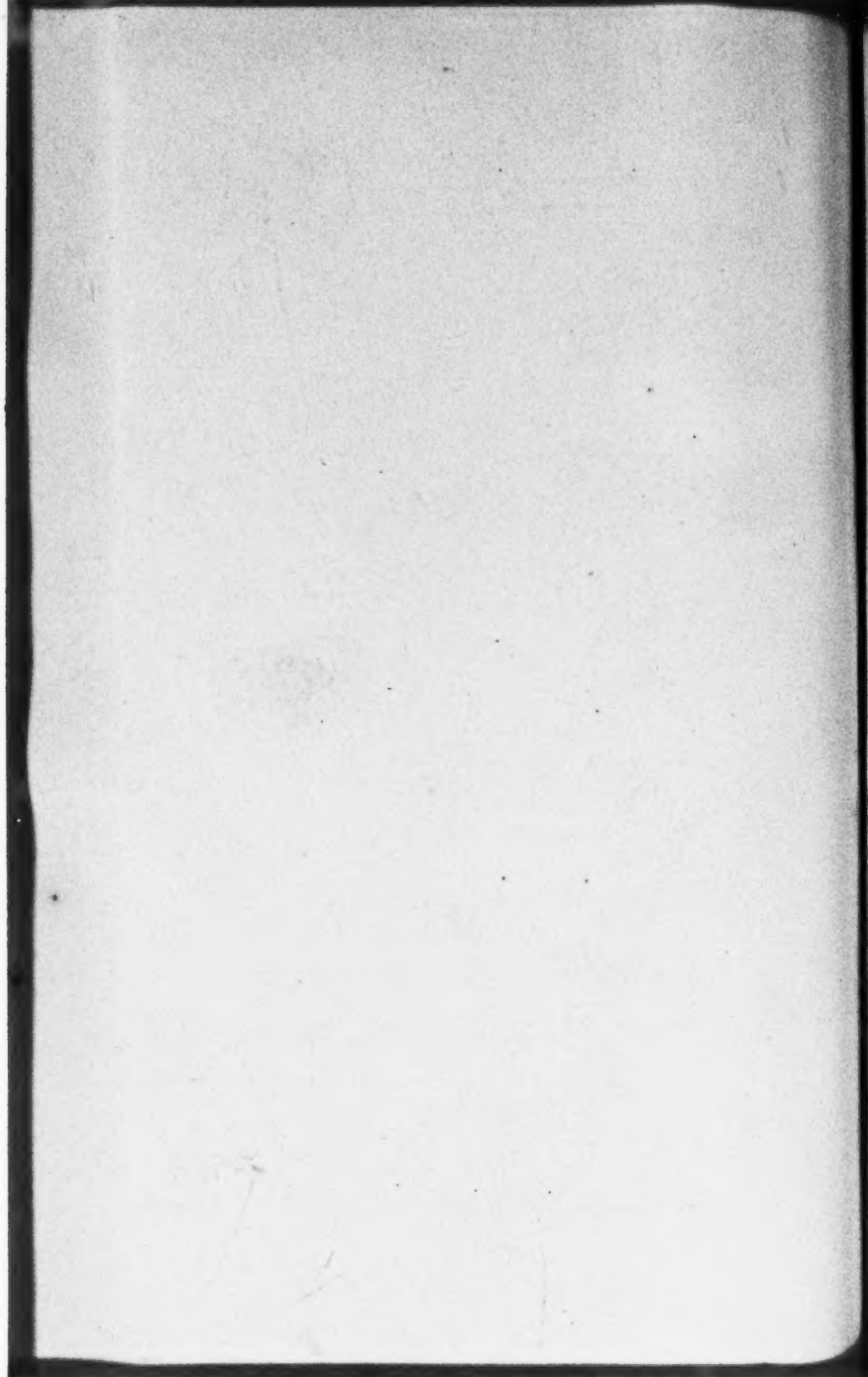


461

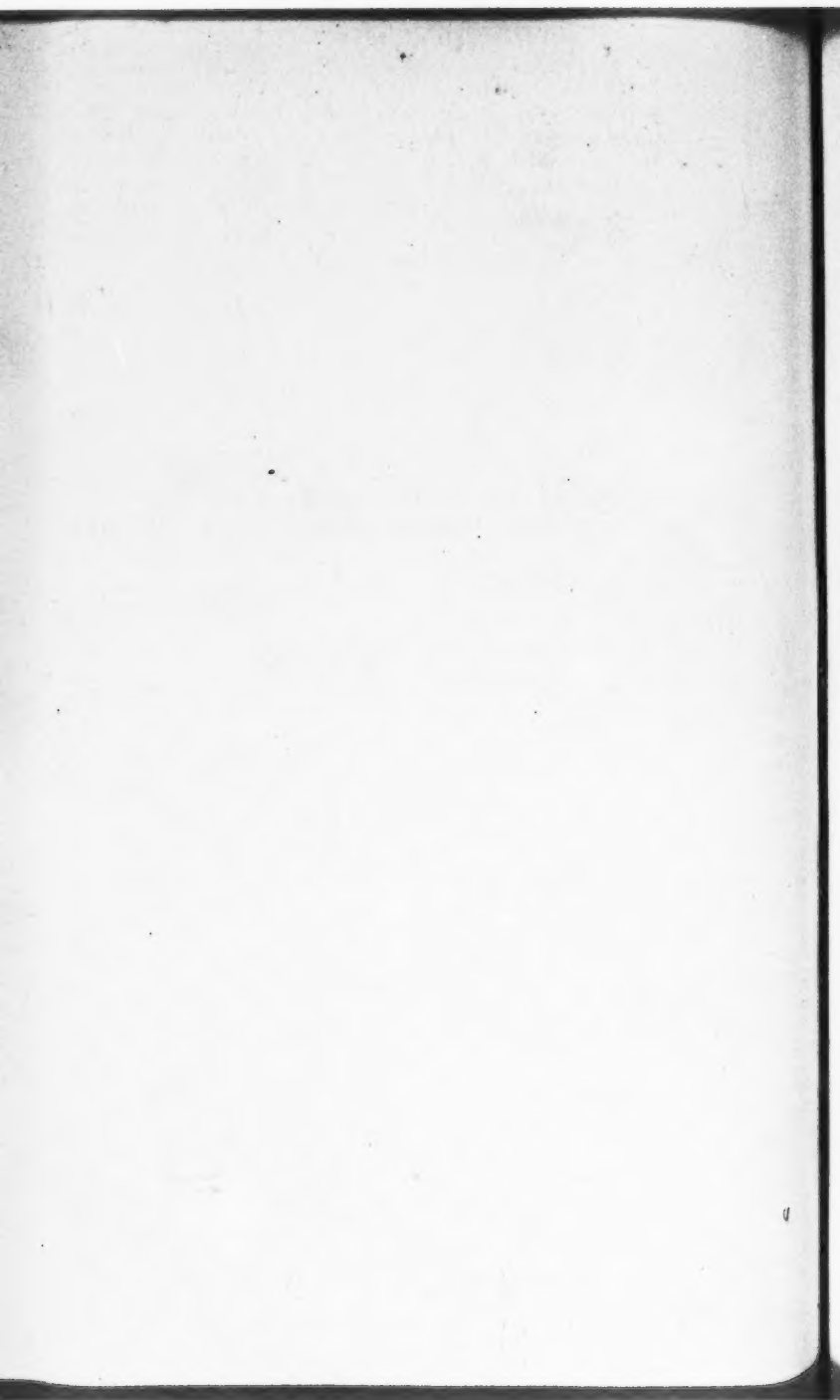












The said document is endorsed upon a copy of the "expediente," written upon 39 sheets of official paper, with the seal of the years 1856-'7 engraved and the seal of the Republic of Mexico stamped on each sheet, and which is certified as follows:

"It (this copy) agrees with its originals, which are in the possession of Don Manuel Maria Gandara, at whose request this copy has been made on these 39 sheets, with the proper seal; and I authorize the same, signing with my assisting witnesses."

RAMON T. CUEN.

Witness:-

J. GABRIEL SALCIDO.

JESUS P. FORTTEL.

Lic. Jose de Aguilar, governor of Sonora.

I certify that the signature, which precedes, of Ramon T. Cuen, judge of the first instance of civil matters of the district of Ures, is that which he uses and employs in all his official acts.

In witness whereof I give these presents, at Ures, this 27th day of March, 1858.

[Seal Government of Sonora.]

JOSE AGUILAR.

Endorsed: "Filed in surveyor general's office June 9. 1864. Levi Bashford, surveyor general." Filed in the office of the clerk court of private land claims March 8, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

467

(Ex. F.)

In the city of Guaymas of Zoragoza, on the second day of the month of March, 1869, before me, Jose Bustamente, judge of the first instance of the district, the ordinary assisting witnesses, with whom I act for want of a notary public, and the instrumental witnesses, who will be mentioned in the end of this instrument, appeared Don Francisco A. Aguilar and Don Miguel Gandara, in representation of his father, Don Manuel Gandara, as shown by the general power executed in his favor in the city of San Luis Potosi, on the 28th day of January, 1868, before the notary, Don Isodoro Cobello, which I power I certify that I have seen, and the first having proved himself to be solvent with the pueblo (public) treasury and registered in the registry of the national guard, as shown by the certificates presented, which I also certify that I have seen, both of lawful age, the first a resident of this city, and the second of Ures, who said that consulting their mutual interests that they agreed in the sale of the lands called Tumacacori, Calabasas, and Huebabi, situated in the Territory of Arizona, belonging to the United States, which lands belong to the vendor by virtue of a title of sale, transfer, and adjudication in his favor by the treasury of the department of Sonora in the year 1844, all of which is based on a primitive title issued in 1807 for the said lands to the natives of

Tumacacori as a fundo legal of their pueblo and estancia (stock rancho) for the same, by virtue of which they being in full dominion to the said Don Francisco A. Aguilar; and, in order to carry out the said sale in due form of law, the said Don Francisco declares that he gives as sale to Don Miguel Gandara, in representation of his father, Don Manuel Maria Gandara, said land, declaring that he has not sold, alienated, or mortgaged the same; that they are clear of all responsibility and encumbrances; as such he sells the same, with all their uses and servitudes and all things thereto annexed that they have had or have pertaining thereto, according to law, for the sum of four hundred and ninety-nine dollars, which they have secured to their entire satisfaction, and the said sum being paid and satisfied, he executed in favor of Don Miguel Gandara, in representation of his father, Don Manuel Maria Gandara, the receipt. He also declares that the said amount of \$499 is the just and true value of said lands, the ownership and dominion of which he renounces, cedes, and transfers in favor of the representative of Senor Gandara, so that he may dispose of the same as a thing belonging to him, acquired by just and legal title, and that he may take the possession that of right belongs to him, and since the delivery of the money does not appear, he renounces the law 9, title 1, partida 5, and finally he obligates himself for the security of this place, and in the same act Don Miguel Gandara, to whom I certify the title referred to was delivered, as also the accompanying map, in representation of his father, Don Manuel Maria Gandara, said that he accepted this writing in all its parts, both parties obligating themselves to the fulfillment of what is set forth in the same, with all their property, present and future, declaring that there is no fraud or deceit in the matter, and if there should be, in large or small amount, they make of the same mutual donation, final and irrevocable, renouncing all right of action and the time allowed by law for commencing the same. Thus they said and signed, being advised that this document was to be registered in the office of mortgages within the term of eighty days, the taxes being personally paid into the public treasury under the penalty of the nullity of this instrument if the same should not be done.

The citizens, Angel Rodriguez, Juan Encinas, and Rafael S. Canez, who are present. Having witnessed which I attest.

FRANCISCO A. AGUILAR.
MIGUEL GANDARA.

Instrumental w's: ANGEL RODRIQUEZ.

Instrumental w's: JUAN ENCINAS.

Instrumental w's: RAFAEL CANEZ.

469 Before me—

JOSE BUSTAMANTE.

Assistant: CHARLES R. VALENZUELA.

Assistant: EDWARD MORALES.

March 3rd, 1869, the sum of \$24.95, the corresponding tax of five per cent. on the sum of \$499, the transfer of dominion, as set forth

in the foregoing deed, has been paid by Don Miguel Gandara in representation of his father, Don Manuel Maria Gandara, with the corresponding impost of 25 per cent. federal tax.

GUAYMAS, *March —*, 1869.

This deed remains registered in folio 2 verso and 3 front of the respective book; all of which I authorized and signed with the assisting witnesses.

JOSE BUSTAMENTE. [SEAL.]

Assistants: CARLOS R. VALENZUELA.
JOSE MARIA VIZCANO.

Endorsed: "Filed Dec. 22, 1879. John Wasson, surveyor general." Recorded in the office of the county recorder of the county of Pima, Territory of Arizona, July 20, 1869. Filed in the office of the clerk court of private land claims March 8, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

470

Ex. "G."

Know all men by these presents that we, Manuel Maria Gandara and Miguel Gandara, of the city of Guaymas, in the State of Sonora, Republic of Mexico, have this day made, constituted, and appointed Dr. Guillermo Andrade, of the city and county of San Francisco, California (one of the United States of America), our true and lawful attorney, for us and in our names, place, and stead to enter into and take possession of the following-described pieces and parcels of land, situated in the county of Pima and Territory of Arizona and within the limits of the United States of America and described as follows, to wit: Three certain pieces or parcels of land lying and being in the county of Pima and Territory of Arizona and within the limits of the United States and best known as the "Tumacacori." Calabasas, and Huevari grants, and fully described by the original deeds from Alexo Garcia Conde, intendente of provincia of Real Hacienda, to an Indian community by letters patent bearing date April 2d, 1807, and the same lands being afterward sold at public auction by order of the supreme government of Mexico and bought by Francisco Alejandro Aguilar and conveyed to him by letters patent from the supreme government of Mexico, bearing date April 19, 1844, and subsequently conveyed by Francisco Alejandro Aguilar to Dr. Miguel Gandara, and more fully described in the Book of Records, pages 36, 37, and 38, in the city of Guaymas, State of Sonora, Republic of Mexico, and containing six leagues, more or less, according to the survey made by order of the Mexican government.

To grant, bargain, sell, and convey the same or any portion thereof for such sum or price and on such terms as to our said attorney, Dr. Guillermo Andrade, may deem best, and for us and in our names or otherwise to make, execute, acknowledge, and deliver good and sufficient deeds of conveyance for the same, and such other

instruments in writing as may be necessary, and collect, receive, and receive any and all sums of money that may become due and owing to us from such sale, and to give receipts and acquittances therefor.

471 Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully as to all intents and purposes as we might or could do if personally present, hereby ratifying and confirming all that our said attorney shall lawfully do or cause to be done by virtue hereof.

Witness our hands and seals, at the city and port of Guaymas, State of Sonora, Republic of Mexico, this de Sonora day of Mexico, Julio 1, 1876.

M. M. GANDARA. [SEAL.]
M. GANDARA. [SEAL.]

Guaymas.

Signed, sealed, and delivered in presence of—

CAYETANO L. YNIGO Y
FRANCISCO YRIGOYEN.
C. L. YNIGO.
F. YRIGOYEN.

Julio 1°, 1876.

Paso ante mi.
Matias Moranl.
E. P.

Gobierno y comda. militar del Estado de Sonora.

Certifico que la firma que antecede, es la que usa el Notario Publico Co. Matias Moran en todos sus actos oficiales y particulares.
Guaymas, Julio 7, del 1876.

V. MARISCAL.

Consulate of the United States of America.

GUAYMAS, MEXICO, *July 7th*, 1876.

I, A. F. Ganison, vice-consul of the U. S. for Guaymas, Mexico, and the dependiencies thereof, do hereby certify that the signature of V. Mariscal, military governor of the State of Sonora, Mexico, to the above paper is his true, genuine signature, well known to me to be the same he uses in all his official and private act-, and as such is entitled to full faith and credit; and I further certify that the said V. Mariscal is the military and acting civil governor of the State of Sonora, duly appointed and exercising the full functions of his said office, military governor of Sonora, and as such duly qualified and authorized to certify and authenticate signatures and other notarial acts.

472 In witness whereof I have herewith set my hand and affixed the seal of the U. S. consulate this 7th day of July, 1876.

[Seal of the Consulate of the United States.]

A. F. GANISON,
U. S. Vice-Consul.

Endorsed: Power of attorney. Manuel Maria Gandara and Miguel Gandara to Guillermo Andrade. Dated —, 1876. Filed and recorded at request of Claude Anderson January 2, 1879, at 10 a. m., in Book 1, Powers of Attorney, Pima Co., A. T., pages 186. S. W. Carpenter, county recorder, by W. A. McDermott, deputy. Filed Dec. 22nd, 1879. John Wasson, U. S. surveyor gen'l. 4 Journal, vol. 1, pgs. 258-260. Filed in the office of the clerk court of private land claims March 8, 1894. Jas. H. Reeder, clerk, by R. L. Young, deputy.

473

Ex. H; also Ex. IX.

This indenture, made the twenty-fourth day of July, one thousand eight hundred and seventy-seven, between Manuel M. Gandara and Miguel Gandara of the city of Guaymas in the State of Sonora, Republic of Mexico, by their attorney-in-fact, Guillermo Andrade of the city and county of San Francisco, State of California, United States of America, parties of the first part, and C. P. Sykes, of said city and county of San Francisco, State of California, the party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of twelve thousand five hundred (\$12,500) dollars, in gold coin of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained sold, conveyed and confirmed, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following-described pieces and parcels of land situated in the county of Pima and Territory of Arizona, and within the limits of the United States of America and described as follows, to wit: Three certain pieces or parcels of land lying and being in the county of Pima and Territory of Arizona and within the limits of the United States and best known as the Tumacori, Calabassis and Huebari grants and fully described by the original deeds from Alexo Garcia, Conde intendente of provincia of Real Hacienda, to an Indian community by letters patent, bearing date April 2nd, 1807, and the same lands being afterwards sold at public auction by order of the supreme government of Mexico and bought by Francisco Alexandra Aguilar; and conveyed to him by letters patent from the supreme government of Mexico, bearing date April 19th, 1844, and subsequently conveyed by Francisco Alexandra Aguilar to Don Miguel Gandara and more fully described in the Book of Records, pages 36, 37 and 38 in the city of Guaymas, State of Sonora, Republic of Mexico, and containing six (6) leagues, more or less,

474 according to the survey made by order of the Mexican government, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the revision and revisions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the above-described premises, and every part and parcel thereof, with the appurtenances to have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set our hands and seals this day and year first above written.

MANUEL M. GANDARA,

By his attorney-in-fact, G. ANDRADE. [SEAL.]

MIGUEL GANDARA,

By his attorney-in-fact, G. ANDRADE. [SEAL.]

Signed, sealed, and delivered in presence of—

HENRY C. BLAKE.

JOSEPH WHITE.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this twenty-fourth day of July, A. D. one thousand eight hundred and seventy-seven, before me, Henry C. Blake, a commissioner of deeds for the Territory of Arizona, duly appointed commissioner and residing in the city and county of San Francisco, State of California, and therein residing, personally appeared G. Andrade, personally known to me to be the same person described in and who executed the annexed instrument, as the attorney-in-fact of Manuel M. Gandara and Miguel Gandara, named in the annexed instrument as parties thereto, and therein described as parties who executed the same, by their said attorney, and the said G. Andrade then and there duly acknowledged to me that he executed the same freely and voluntarily as and for the act and deed of the said Manuel M. Gandara and Miguel Gandara and for the uses and purposes therein mentioned.

475 In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in said city and county, the day and year last above written.

[Commissioner's Seal.]

(Signed)

HENRY C. BLAKE,

Commissioner of Deeds for the Territory of Arizona.

Endorsed: Deed. Manuel M. Gandara and Miguel Gandara, by att'y, G. Andrade, to C. P. Sykes. Dated July 24th, 1877. Recorded, at request of Claude Anderson, January 27th, A. D. 1879, at 10 a. m., in Book 4 of Deeds, Pima Co., A. T., pages 600 to 604. S. W. Carpenter, county recorder, by W. A. McDermott, deputy. Filed Dec.

22d, 1879. John Wasson, U. S. sur. gen'l. 5. Journal, vol. 1, pgs. 260-262. Filed in the office of the clerk court of private land claims

Mar. 8, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

476 [Endorsed:] No. 8. F. No. 21. In the court of private land claims. Wm. Faxon, Jr., trustee, *et al. vs. The United States et al.* (H.) Tumacacori and Calabasas grant. Gandara, by Andrade, to Sykes. Exhibit (land court). Filed in the office of the clerk court of private land claims March 8, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy. Francis J. Heney, att'y for Wm. Faxon, Jr., trustee, *et al.*

477

Ex. I.

This indenture, made the twenty-sixth day of November in the year of our Lord one thousand eight hundred and seventy-eight, between Charles P. Sykes, the party of the first part and John Currey, the party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of nine thousand (\$9,000.00) dollars, gold coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, forever, the undivided three-sixteenths ($\frac{3}{16}$) of those certain pieces or parcels of land, (excepting the town site of Calabasas) lying and being in the county of Pima, and Territory of Arizona, and best known as the "Tumacacori," "Calabasas" and "Huevari" grants, and fully described by the original deeds from Alexo Garcia, Conde intendente of provincia of Real Hacienda, to an Indian community by letters patent bearing date April 2d, 1807, and the same lands being afterwards sold at public auction by order of the supreme government of Mexico, and bought by Francisco Alejandro Aguilar and conveyed to him by letters patent from the supreme government of Mexico, bearing date April 19, 1844, and subsequently conveyed by Francisco Alejandro Aguilar to Don Miguel Gandara, and more fully described in Book of Deeds No. 1, pp. 321 to 342, records of Pima county, Territory of Arizona, and containing six (6) leagues, more or less, according to the survey made by order of the Mexican government.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

478 In witness whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

(Signed)

C. P. SYKES. [SEAL.]

Signed, sealed, and delivered in the presence of—

(Signed) EDW'D CHATTIN.

THOS. Q. QUARTERENDUER.

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA, }
 City and County of San Francisco, } ^{ss.}

I, Edward Chattin, a commissioner for the Territory of Arizona, duly commissioned and qualified under and by virtue of the laws thereof, residing in the city and county of San Francisco and State of California, do certify that on the 26th day of November, in the year of our Lord one thousand eight hundred and seventy-eight, before me personally appeared Charles P. Sykes, personally known to me to be the person whose name is subscribed to the annexed instrument as a party thereto and to be the individual described in and who executed the said instrument, and he, the said Charles P. Sykes, duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal as such commissioner, at my office, in the city [SEAL.] and county of San Francisco and State of California, this 26th day of November, in the year of our Lord one thousand eight hundred and seventy-eight.

(Signed)

EDW'D CHATTIN,
Commissioner for Arizona Territory,
N. San Francisco, California.

Endorsed: Charles P. Sykes to John Currey. Deed. Dated 26th November, 1878. Recorded, at the request of C. P. Sykes, Feb'y 5, A. D. 1879, at 30 minutes past 11 a. m., in Book 4 of Deeds, page 619. S. W. Carpenter, county recorder, by W. A. McDermott, deputy. Filed Dec. 22d, 1879. John Wasson, U. S. sur. gen'l. 6. Journal, vol. 1, pp. 262-264. Filed March, 1894. James H. Reeder, clerk, by R. L. Long, dep.

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(Ex. K.)

This indenture, made the eighteenth day of December in the year of our Lord one thousand eight hundred and seventy-nine, between Charles P. Sykes and John Curry, both of the city and county of San Francisco, California, parties of the first part, and the Calabasas Land and Mining Co. (a corporation organized under the laws of the State of California), party of the second part, witnesseth,

That the said parties of the first part for and in consideration of the sum of one hundred dollars, gold coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns, forever, all the right, title, interest and estate of the said parties of the first part and of each of them, in and to all the undivided interests they now have on those certain pieces or parcels of land (excepting the town site of Calabasas) lying and being in the county of Pima and Territory of Arizona, and

best known as the "Tumacacori," "Calabasas," and "Huevavi" grants and fully described by the original deeds from Alejo Garcia Conde intendente of provincia of Real Hacienda to an Indian community by letters patent, bearing date April 2nd, 1807, and the same lands being afterwards sold at public auction by order of the supreme government of Mexico, and bought by Francisco Alexandro Aguilar, and conveyed to him by letters patent from the supreme government of Mexico, bearing date April 19th, 1844, and subsequently conveyed by Francisco Alexandro Aguilar, to Don Miguel Gandara, and more fully described in Book of Deeds N. 1, pp. 321 to 342, records of Pima county, Arizona, and containing six (6) leagues, more or less, according to survey made by order of the Mexican government.

480 Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

C. P. SYKES. [SEAL.]
JOHN CURREY. [SEAL.]

Signed, sealed, and delivered in the presence of—

EDW'D CHATTIN.

JAMES L. KING.

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss :

I, Edward Chatten, a commissioner for the Territory of Arizona, duly commissioned and qualified under and by virtue of the laws thereof, residing in the city and county of San Francisco and State of California, do certify that on the eighteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, before me personally appeared Charles P. Sykes and John Currey, personally known to me to be the persons whose names are subscribed to the annexed instruments as the parties thereto and to be the individuals described in and who executed the said instrument, and the said Charles P. Sykes and John Currey duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal as such commissioner, at my office, in the city and county of San Francisco and State of California, this eighteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.]

EDW'D CHATTIN,
*Commissioner for Arizona Territory,
San Francisco, California.*

Filed and recorded, at request of C. P. Sykes, January 9th, A. D. 1880, at 1 p. m.

S. W. CARPENTER,
County Recorder,
 By ARTHUR BORTON, *Deputy.*

TERRITORY OF ARIZONA, }
County of Pima, } ss:

I, Chas. R. Drake, county recorder in and for the county of Pima, do hereby certify that the above and foregoing is a full, true, and correct copy of deed from C. P. Sykes and John Currey to the Calabasas Land and Mining Company, as appears of record now in my office in Book 6, Deeds of Real Estate, pages 236, 237, 238, & 239.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tucson, this 13th day of September, A. D. 1881.

CHAS. R. DRAKE,
County Recorder,
 By ANTHONY COENEN, *Deputy.*

[SEAL.]

(Filed January 29, 1894.)

JAMES H. REEDER, *Clerk,*
 By R. L. LONG, *Dep.)*

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Ex. L.

This indenture, made the twenty-first day of September, in the year of our Lord, one thousand eight hundred and eighty-one, between the Calabasas Land and Mining Company, a corporation duly constituted and organized under the laws of the State of California, and having its principal place of business and office in the city and county of San Francisco, in the State of California, party of the first part and The Santa Rita Land Mining Company of Colorado, a corporation duly constituted and organized under the laws of the State of Colorado, party of the second part, witnesseth:

Whereas, at a meeting of the shareholders of the Calabasas Land and Mining Company, duly called and held at the said company's office, on the thirteenth (13) day of June, 1881, at which there were present and represented in person or by proxy 74,865 shares of the 100,000 shares of said company, the object of the said meeting being to consider the propriety of making a sale and conveyance of all the property of said company, situate and being in the Territory of Arizona, to the Santa Rita Land and Mining Company of Colorado, a corporation then about to be formed under the laws of the State of Colorado, and to make such sale if deemed proper by the shareholders of said Calabasas Land and Mining Company; and

Whereas, the meeting of shareholders of said Calabasas Land and Mining Company on the day last aforesaid duly adjourned to the twentieth (20) day of June, 1881, for the further consideration and action of the shareholders of said last-named company of and re-

specting the proposition for the sale and conveyance of said properties to said The Santa Rita Land and Mining Company of Colorado, then about to be formed as aforesaid; and whereas on the said twentieth day of June, 1881, at the office of the said Calabasas Land and Mining Company there was present and represented in person or by proxy 94,890 shares of stock of said Calabasas Land and Mining Company, and it appearing that the Santa Rita Land and Mining Company of Colorado, a company or corporation then duly organized under the laws of the State of Colorado, proposed and offered to give and issue 100,000 shares of the stock of its company to the shareholders of the Calabasas Land and Mining Company; after duly considering such proposition and offer on the motion of John Currey, a shareholder in the stock of the Calabasas Land and Mining Company, seconded by F. A. McGee, a shareholder in said comp'y, it was, Resolved: That the Calabasas Land and Mining Company, at this special meeting of its stockholders, after duly considering the proposition and offer of the Santa Rita Land and Mining Company of Colorado to purchase of this company its properties situate and being in the Territory of Arizona at and for the price and consideration; that, the said The Santa Rita Land and Mining Company of Colorado shall give and deliver to this company, one hundred thousand (100,000) shares of the stock of the Santa Rita Land and Mining Company of Colo., for one hundred thousand shares of the stock of the Calabasas Land and Mining Company for the use and benefit of the stockholders of the last-named company; to be apportioned to them in proportion to their respective interests—does accept said terms and conditions of sale and transfer; and be it further

Resolved; That the president of this company E. L. Sullivan, and the secretary thereof F. A. McGee be and are hereby authorized and empowered to execute and sign all deeds and instruments of transfer and conveyance of the properties—which may be necessary or proper for the transfer and conveyance of the properties of this company, situate and being in the Territory of Arizona, to the said The Santa Rita Land and Mining Company of Colorado, at and for the price and considerations in the above resolution expressed.

Now, therefore in consideration of the premises and of the issue of the stock of the said The Santa Rita Land and Mining Company of Colorado, to the shareholders of the Calabasas Land and Mining Company, as in the first of the above-recited resolutions, the party of the first part does hereby grant, sell and convey unto the said party of the second part, and its successors in interest forever all the right title, interest and estate of the party of the first part, of, in and to all those certain tracts of land and mining properties and personal property of every nature and kind whatever, situate and being in the county of Pima, Territory of Arizona described as follows: that is to say: The Tumacacori, "Calabasas" and "Huevavi" land grants, (excepting the town site of Calabasas, and subject to the right of way granted by the board of directors of the Calabasas Land and Mining Company, at a meeting of directors held at the office of the said company on the 24th day of De-

cember 1880, to the Arizona Southern Railway Company; also subject to a certain bond for a deed for 160 acres of land, executed by Charles P. Sykes to Peter Kitchen of Arizona Territory) and fully described by the original deeds from Alejo Garcia Conde, intendente de provincia of Real Hacienda to an Indian community by letters patent, bearing date April 2nd 1807, and the same lands being afterwards sold at public auction by order of the supreme government of Mexico, and bought by Francisco Alexandro Aguilar, and conveyed to him by letters patent, from the supreme government of Mexico, bearing date April 19th 1844, and subsequently conveyed by Francisco Alexandro Aguilar to Don Miguel Gandara, and more fully described in Book of Deeds No. 1, pp. 321 to 342 records of Pima county, Arizona, and containing six (6) leagues, more or less according to survey made by order of the Mexican government; also the several mines of the Calabasas Land 484 and Mining Company: viz. the "San Xavier," the "Patterson," the "Democrat," the Arizona King and the "Arizona Queen," situate about 9 miles in so'westerly direction from the "San Xavier mission," in Pima Co., Arizona; also the "Buena Vista" mine situated in the Sierra de Amale mining district about 12 miles west from Tucson, Pima county Arizona, together with all personal property—viz. 1 diamond drill and attachments, all the machinery on mines, with all tools of every kind and description on the properties.

Together with all and singular the tenements, hereiditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof;

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part and to its successors and assigns forever.

In witness whereof the said party of the first part has executed this deed by E. L. Sullivan its president, and F. A. McGee, its secretary, with its corporate seal affixed, the day & year first above written.

CALABASAS LAND AND MINING
COMPANY,

[SEAL.]

By E. L. SULLIVAN, [SEAL.]
President of the Calabasas Land & Mining Co., and
F. A. MCGEE, [SEAL.]
Sect. of the Calabasas L. & M. Co.

Witness:-

EDW'D CHATTIN.
W. N. KEMPSTON.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On the twenty-third day of September, A. D. one thousand eight hundred and eighty-one, before me, Edward Chatten, a commissioner for the Territory of Arizona, duly commissioned and qualified under

and by virtue of the laws thereof, residing in the city and county of San Francisco and State of California, personally appeared E. L.

Sullivan, known to me to be the president, and F. A. McGee,
485 known to me to be the secretary, of the Calabasas Land and

Mining Company, a corporation duly organized under and by virtue of the laws of the State of California, whose names are subscribed to the annexed instrument, who are personally known to me to be the individuals described in and who executed the same, the said Calabasas Land and Mining Company being named in the said instrument and known to me to be the corporation described therein and that executed the same as a party thereto; and they, the said E. L. Sullivan and F. A. McGee, duly acknowledged to me that they executed the same freely and voluntarily as such president and secretary and as and for the act and deed of the said Calabasas Land and Mining Company, and that said corporation executed the same for the uses and purposes therein mentioned, and that the seal which is thereto affixed is the corporate seal of said corporation and was thereto affixed by authority thereof.

In witness whereof I have hereunto set my hand and affixed my
[SEAL.] official seal, at my office, in the city and county of San Francisco, the day and year last above written.

EDW'D CHATTIN,

Commissioner for Arizona T. in San Francisco, California.

Endorsed: Deed. Calabasas L. and M. Co. to The Santa Rita L. and M. Co. Dated Sept. 21st, 1881.

Endorsed: Recorder's office, Tucson, Pima Co., A. T. Filed and recorded, at request of C. P. Sykes, Dec. 17th, A. D. 1881, at 9.30 a. m., Book 11, Deeds R. E., pages 4, 5, 6, 7, 8, & 9. Chas. R. Drake, county recorder. Filed in the office of the clerk court of private land claims Jan. 29, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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Ex. M.

The Santa Rita Land and Mining Company First Mortgage.

This indenture, made the 1st day of March, A. D. 1886, between the Santa Rita Land and Mining Company, a corporation organized and existing under the laws of the State of Colorado, party of the first part, hereinafter called the company. and Solomon S. Sleeper and Edward H. Mason, both of Boston, Massachusetts, parties of the second part hereinafter called the trustees, witnesseth: Whereas said company, for the purpose of purchasing cattle to be placed on its grazing lands, and of thoroughly developing the resources of its properties, has resolved to execute, issue and dispose of its bonds, designated as first-mortgage bonds, limited absolutely to the amount of \$250,000, to be issued from time to time, as the directors of said company may determine, all of which bonds will bear date March 1st, 1886, and be of like tenor and in the form following:

UNITED STATES OF AMERICA, *State of Colorado.*

No. —. *The Santa Rita Land and Mining Company* \$500.
 First-mortgage Bond.

For value received the Santa Rita Land and Mining Company promises to pay the registered holder hereof the sum of five hundred dollars (\$500) on the first day of March, A. D. 1896, with interest at the rate of seven per cent. per annum, payable semi-annually, on the 1st day of March and September, in each year, both principal and interest being payable at the agency of the company in Boston, Massachusetts. This bond is one of the series of registered bonds, absolutely limited to two hundred and fifty thousand dollars is secured by a deed of trust and mortgage to trustees, conveying all the property of the company, whether now existing or hereafter to be acquired, except its town lots as set forth in said mortgage, is not valid unless certified by the trustees, and is transferred only on the books of the company, by the registered holder or his duly authorized attorney. The holder of this bond agrees that no recourse shall be had, in any manner or in any event, for the payment of either principal or interest to any stockholder, director or officer of said company, either directly or through said company, by way of assessment or otherwise. Said company reserves the right to pay the whole or any part of the bond-secured by said mortgage, determined by lot at par and accrued interest at any time after the expiration of five years from their date, according to the terms of said mortgage.

In witness whereof the Santa Rita Land & Mining Company have caused its corporate seal to be hereto affixed, and this bond to be signed in its behalf by its president and treasurer, this 1st day of March, A. D. 1886.

THE SANTA RITA LAND AND
 MINING COMPANY,

[SEAL.]

By ———, *President.*
 ———, *Treasurer.*

The following certificate being endorsed upon each of said bonds:

Trustees' Certificate.

The within bond is one of the series of registered bonds issued by the Santa Rita Land and Mining Company, limited to two hundred and fifty thousand dollars, and is secured by a first-
 487 mortgage dated March first, 1886, as in said bond recited, upon all the property of the company except its town lots, to the undersigned trustees.

————, *Trustees.*

Now, therefore, said company, in order to secure the payment of the principal and interest of said bonds, according to their tenor and without preference for any cause whatsoever, and in consideration of one dollar to it paid by said trustees, the receipt whereof is hereby acknowledged, doth by these presents grant, bargain, sell,

transfer and convey unto said trustees, all the real and personal property of said company now in its possession, or to which it may be in any way entitled, or which it may hereafter acquire, including the land grants known as Calabasas and Tumacacori, comprising about 51,000 acres of land, the mining claims and mines known as the Buena Vista, San Xavier, Western Extension of San Xavier, Patterson, Arizona King, Arizona Queen, Democrat, Veta, Banner, Warsaw and Spondulix and the Gold Mountain Tunnel, together with one water-jacket furnace, one diamond drill, and all the machinery, buildings, works, water works, tools and improvements belonging thereto, or used in connection therewith, also all the cattle now owned by said company, consisting of (2,450) twenty-four hundred and fifty cows, six hundred and seventy-one (671) three-year-old heifers, seven hundred and seventy-nine (779) two-year-old heifers, one hundred and ninety-five (195) three-year-old steers, fourteen hundred and fifty-seven (1,457) two-year-old steers, ninety-five (95) stags, two hundred and sixty-three (263) bulls, one thousand and four (1,004) heifer calves and one thousand and twenty (1,020) steer calves, according to the books of the company on January the first, 1886, and all bearing the company's brand, to wit: "83" be said number more or less, also all the animals now owned or hereafter to be acquired by said company, and all the rents, receipts, royalties, and profits of said company, especially excepting, however, from the operation of this instrument, such lots as said company owns or may own in the town of Calabasas, according to the original map and plan of the Calabasas town site and surrounding country, made by William S. Edwards, surveyor, in May 1878, and filed in the office of the recorder of Pima county, Arizona, on the 27th day of January, 1879. To have and to hold, all and singular, the granted premises with their appurtenances, unto said trustees, their successors and successor in said trust, their survivors and the survivor of them and the heirs of such survivor, and their assigns, for the uses, purposes and trusts, in this indenture declared, subject to all the conditions herein expressed and with the powers and authority herein conferred. Provided, nevertheless, that if the said corporation shall well and truly pay the principal and interest of all the said bonds issued and to be issued under the provisions of this indenture and hereby secured as the same become due and payable, then this indenture and the estate hereby granted, shall cease and determine, and all the rights, title and interest, in and to any and all property hereby conveyed to said party of the second part, not then disposed of, under the powers herein conferred, shall revert to and vest in said company.

488 This indenture is made upon the terms, condition and agreement following, viz: The personal property aforesaid shall remain in custody of said trustees, but otherwise, until default in the payment of the principal or interest of the said mortgage bond or in the performance of the other obligations of said corporation set forth in this indenture, the possession, management, use and control of the business of said company, with the income, rights, and franchises, property and estate hereby conveyed, shall be

and remain in said company, and said company, while not in default as aforesaid, shall have the right to dispose of the revenue and income, in such manner as it may elect, without the interference of said trustees; and until such default and possession taken to enforce the same, shall have the right to carry on the business of which said company was organized.

2. The company shall pay any taxes and assessments which may be levied lawfully upon said property, but unless the trustees request such payment in writing failure to make such payment shall not be deemed a default within the meaning of the third and fourth articles.

3. In case default shall be made in the payment of any interest on any of the bonds secured hereby or in any requirement to be done or kept by said company and such default shall continue for the period of twelve months, or before the expiration of twelve months if said company consents, it shall be lawful for the trustees hereunder, personally, or by attorney or agent, to enter upon the premises hereby conveyed and take possession of the same with all the property and things herein conveyed, and each and every part thereof, and conduct said business making from time to time, such replacements, improvements, alterations, and additions as they may deem advisable, and to collect and receive all incomes, rents issues and profits thereof; and, after paying and deducting the expenses of operating and conducting said business and all payments for taxes, charges and liens prior to the lien of this indenture, the moneys arising as aforesaid shall be applied to the payment of interest upon the bonds secured hereby in the order of maturity of such interest, to be paid *pro rata* in case of a deficiency in net earnings to meet in full the interest maturing at any time, and after paying in full all interest which may be due and unpaid, then the remainder shall be applied to the payment of the principal of said bonds, if then payable, otherwise shall be held as a trust fund for the payment of such principal, when the same shall become payable; provided, that, if at any time prior to actual sale of said property by the trustees, under the power herein granted, said company shall pay the interest and principal of all said bonds then overdue and unpaid, and also all taxes and assessments then overdue; or, if the trustees in possession have paid the same in full out of the net earnings of said property, in either case said property, with all repairs and improvements and all moneys, claims, accounts and demands pertaining to the same in the possession of the trustees, shall be surrendered to said company, subject however, to the provisions of this mortgage.

4. In case default shall be made as aforesaid and shall continue as aforesaid; or in case default shall be made in the payment
489 of the principal of said bonds, or any part thereof and such default shall continue for the period aforesaid, it shall be lawful for said trustees, their successors or successor in said trust, after entry as aforesaid or without entry, personally or by agent or attorney to sell and dispose of, all and singular, the premises hereby conveyed, or intended so to be, at public auction, in the Territory of

Arizona, having first given notice of the time and place of such sale, by advertisement to be published not less than once a week for four successive weeks, in one or more newspapers published in the city of Tucson, Arizona, and to adjourn such sale from time to time at their discretion and if so adjourning to make the same at the time and place to which the same may be so adjourned; and upon such sale, to make and deliver to the purchaser or purchasers of the property so sold good and sufficient deeds and conveyances for the same; and such conveyances shall operate as a full and complete and transfer assignment and sale of all the right, title and interest of said company, in and to the premises aforesaid, or any part thereof, and the purchasers, after paying the purchased-money and having the receipt of said trustees therefor, shall not be liable to see to the application of the purchase-money or to be required to inquire into the necessity, expediency of or — for any such sale. And the trustees, their successors and successor in trust after paying the expenses of this trust, including a reasonable compensation to said trustees and the cost and expenses of making said mortgage premises and the expenses of said foreclosure and sale, shall apply the net proceeds ratably to the payment of the interest then due and unpaid, and second, ratably to the payment of the principal of the outstanding bonds aforesaid, whether then due or not, and shall pay over any surplus to the said company, its successors and assigns.

5. Said company, for itself, its successors and assigns, hereby covenants with said trustees, their successors and successor in said trust, that it will, and at its own charge, at all times, do all things necessary and proper, to make and keep valid this mortgage and the lien and the title of the trustees under the same; that it will at any time or times hereafter, upon request of said trustees, their successors and assigns, make, do, execute and cause to be made, done and executed, all such further acts, conveyances and assurances in law, as may be reasonably required for the better and more effectual vesting and confirming of the premises hereby granted to — intended to be granted, and in and to said trustees, their successors and successor and their assigns, including the purchaser or purchasers at any foreclosure sale made as aforesaid.

6. The trustees shall be under no obligation to execute the power of entry hereby granted, or the power of sale hereby granted, to take proceedings in equity or at law to enforce the rights of the bondholders under these presents, except upon the written request of the holders of a majority in interest of the outstanding bonds secured hereby and a proper indemnification against the cost and expenses likely to be incurred; and such majority may by an instrument in writing, signed by them and endorsed on this mortgage, and recorded as part thereof, direct the action of the trustees, upon any matter or anything arising under this mortgage, on such terms and conditions, as such majority shall deem proper, 490 and the trustees shall follow such direction. The acts of a majority of the trustees at any time acting hereunder shall in all cases be of the same validity as the acts of the whole number.

7. Said company shall have the right to pay the whole or any

part of the bonds secured hereby, at any time after the expiration of five years from the date of these presents, by complying with the following provisions, viz: It shall give notice by mail to the registered holders of all bonds secured hereby, and by publication twice a weeks for two successive weeks in a daily newspaper published in Boston, Massachusetts, stating the amount of bonds it desires to purchase, and the day and hour when it will open tenders to sell to it on the lowest terms, bonds issued under this mortgage, to the amount advertised for, at not exceeding par and accrued interest, and if an insufficient amount of bonds is tendered at or within the limit aforesaid, then said company shall be at liberty to proceed to draw by lots such an amount of bonds as shall be requisite to complete the amount it desires to purchase, and shall thereupon give notice in the manner above provided, stating the numbers of the bonds so drawn and that the principal of such bond shall be paid at par and accrued interest, on presentation to said company on or before the expiration of fifteen days from the date of said notice and from and after such last-named day all interest upon the bonds so drawn shall cease.

8. It is hereby understood and agreed that any present or future trustee under this indenture may resign and discharge himself of the trust herein created, by notice in writing to said company sixty days before such resignation shall take effect, or such shorter notice as said company may be adequate, and upon proper accounting in respect to his trusteeship and execution of the conveyances herein-after required, and any vacancy in the office of such trustee however, or whenever occurring may be filled by an appointment by said company, in writing, assented to in writing by a majority in interest of the registered holders of outstanding bonds secured by this mortgage, and thereupon all the powers and authorities herein granted to or conferred on said trustees, and all the rights, interest and estate herein conveyed to said trustees, shall become vested in the new trustees, appointed as above, as fully as though he had been originally appointed hereby without any further conveyances; but any trustee so resigning or vacating his office in any manner, shall execute such deeds of conveyance or other instruments as may be necessary or proper to vest all his interest in said trust property in such new trustee, upon the trusts herein expressed, and in case it may at any time hereafter prove impracticable to fill any vacancy which may have occurred in said trust in the manner aforesaid, any court of competent jurisdiction may appoint, and such appointment shall vest the mortgaged premises in the trustee so appointed, as fully and with the same trusts and powers as herein and hereby appointed; and as part of the decree of appointment, such court may direct any such conveyance by any outgoing trustee as may be deemed necessary or convenient.

9. The trustees for themselves, their successors and successor in said trust, hereby accepts said trust and agrees to execute the
491 same, but upon the following terms and conditions: That they and any trustee acting hereunder, shall be answerable only for his own gross negligence and willful default, that the reasonable

charges and expenses of discharging the trust, including the reasonable compensation of said trustee, shall be paid by said company or otherwise out of the trust estate, on which they are hereby charged, that said trustees may appoint agents and attorneys, for whose wrongful acts when selected in good faith, the trustees shall not be responsible, and that the trustees at any time acting hereunder shall not be liable for any error of judgment or mistakes of law or fact made in good faith, and that neither trustees shall be liable in any manner for the acts of the other or others. The trustees shall have full power, in their discretion upon the written request of said company to convey by release or otherwise, to the person or persons designated by said company, any lands or property which in their judgment of the trustees, shall not be necessary for use in connection with the company's business, including any cattle which in their judgment it may not be wise for the company to retain, lands and property acquired for permanent use in substitution for any so conveyed, shall be deemed to be covered by this mortgage, and shall be specifically conveyed to the trustees upon the trusts of these presents.

In witness whereof, the Santa Rita Land and Mining Company has caused its corporate seal to be hereunto affixed and this instrument to be signed in its behalf, by Pliny Nickerson, its president, hereunto duly authorized, and said trustees, to signify their acceptance of said trust have hereunto set their hands and seals, the day and year first above written.

THE SANTA RITA LAND AND
MINING COMPANY,

By PLINY NICKERSON, *President.*

[SEAL.]

SOLOMON S. SLEEPER. [SEAL.]

EDWARD H. MASON. [SEAL.]

We, the undersigned, Pliny Nickerson, president of the Santa Rita Land and Mining Company, the mortgagor in the foregoing mortgage, acting for and in behalf of said company, and Solomon S. Sleeper and Edward H. Mason, trustees, the mortgagees named in the foregoing mortgage, on oath do certify and declare that said mortgage is *bona fide* and is made without any design to defraud or delay creditors.

PLINY NICKERSON, *President.*

SOLOMON S. SLEEPER.

EDWARD H. MASON, *Trustees.*

UNITED STATES OF AMERICA.

STATE OF MASSACHUSETTS, }
City of Boston and County of Suffolk, } ss :

On this 7th day of April, A. D. 1886, personally appeared before me, Stephen W. Reynolds, a notary public in and for said county and State, Pliny Nickerson, known to me to be the person described in and who executed the foregoing instrument as president and in behalf of the Santa Rita Land and Mining Company, the mortgagor

therein, who acknowledged to me that said corporation executed the same freely and voluntarily and for the uses and purposes therein mentioned; and at the same time personally appeared
 492 before me Solomon S. Sleeper and Edward H. Mason, known to me to be the same persons described in and who executed the foregoing instrument as trustees, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned; and at the same time personally appeared before me said Pliny Nickerson, president, and Solomon S. Sleeper and Edward H. Mason, trustees, and made oath that the foregoing affidavit by them subscribed is true.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in said Boston, the day and year in this certificate first above written.

[SEAL.]

STEPHEN W. REYNOLDS,
Notary Public.

Filed and recorded at request of John Haynes 19th of April, A. D. 1886, at 9.40 A. M.

A. B. SAMPSON,
County Recorder.

TERRITORY OF ARIZONA, }
County of Pima, } ss.:

I, Charles A. Shibell, county recorder in and for the county of Pima, do hereby certify that the above and foregoing is a full, true, and correct copy of a mortgage or deed of trust from the Santa Rita Land and Mining Company to Solomon S. Sleeper and Edward H. Mason, trustees, dated the 1st day of March, A. D. 1886, as appears of record now in my office in Book No. 7 of Mortgages, at pages 247 *et seq.*

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tucson, this 20th day of March, A. D. 1895.

[Seal of Recorder Pima County, Arizona Territory.]

CHAS. A. SHIBELL,
County Recorder.

Filed in the office of the clerk court of private land claims March 22, 1895.

JAS. H. REEDER, *Clerk,*
 By R. L. LONG, *Deputy.*

493

(Ex. N.)

Whereas the Santa Rita Land & Mining Company, organized and existing under the laws of the State of Colorado, did on the 1st day of March, A. D. 1886, by its certain deed of trust and mortgage, of that date, which said deed of trust and mortgage was duly recorded in the recorder's office Pima county, Arizona, in Book 7 of Mortgages, pages 247 to 267 inclusive, convey to Solomon S. Sleeper and

Edward H. Mason, both of Boston, Massachusetts, as trustees, the property hereinafter described, for the benefit of the person or persons, firm or firms, corporation or corporations, registered owners of either or any of the bonds of said corporation, known as its first-mortgage, seven per cent bond, dated March 1st, 1886, and limited to the amount of two hundred and fifty thousand dollars: and whereas said deed of trust and mortgage provided, among other things, as follows: viz., in case default shall be made in the payment of any interest on any of the bonds secured hereby or in any requirement to be done or kept by said company and such default shall continue for a period of twelve months, or before the expiration of twelve months if said company consents, it shall be lawful for the trustees hereunder personally or by attorney or agent, to enter upon the premises hereby conveyed and take possession of the same with all the property and things herein conveyed and each and every part thereof and to conduct said business, making from time to time, such replacements, improvements, alterations and additions as they may deem advisable; and to collect and receive all incomes, rents, issues and profits thereof; and after paying and deducting the expenses of operating and conducting said business and all payments for taxes, charges and liens prior to the lien of this indenture, the moneys arising as aforesaid shall be applied to the payment of interest upon bonds secured hereby, in the order of maturity of such interest, to be paid *pro rata* in case of a deficiency in net earnings to meet in full the interest maturing at any time: and after paying in full all interest which may be due and unpaid, then the remainder shall be applied to the payment of the principal of said bonds; if then payable, otherwise shall be held as a trust fund for the payment of such principal when the same shall become payable; provided, that if at any time prior to actual sale of such property by the trustees, under the power herein granted, said company shall pay the interest and principal of all said bonds then overdue and unpaid, and also all taxes and assessments then overdue; or if the trustees in possession have paid the same in full out of the net earnings of said property, in either case said property with all repairs and improvements, and all moneys, claims, accounts and demands pertaining to the same in the possession of the trustees, shall be surrendered to said company, subject, however, to the provisions of this mortgage. In case default shall be made as aforesaid and shall continue as aforesaid, or in case default shall be made in the payment of the principal of said bonds, or any part thereof, and such default shall continue for the period aforesaid, it shall be lawful for said trustees, their successors or successor in said trust, after entry as aforesaid or without entry personally or by agent or attorney, to sell and dispose of all and singular, the premises hereby conveyed, or intended so to be, at public auction in the Territory of Arizona, having first given
494 notice of the time and place of such sale, by advertisement, to be published not less than once a week for four successive weeks, in one or more newspapers published in the city of Tucson, Arizona, and to adjourn such sale from time to time at their discretion, and if so adjourning to make the same at the time and place to which

the same may be so adjourned; and upon such, to make and deliver to the purchaser or purchasers of the property so sold good and sufficient deeds and conveyances for the same, and such conveyances shall operate as a full and complete transfer, assignment and sale of all the right, title and interest of said company, in and to the premises aforesaid, or any part thereof; and the purchasers, after paying the purchase-money and having the receipt of said trustees therefor, shall not be liable to see to the application of the purchase-money or by required to inquire into the necessity, expediency or authority of or for any such sale. And whereas default has been made in the payment of the interest on said bonds, and said default has continued for more than twelve months after said interest became due and payable, according to the tenor and effect of the said bonds, and thereupon the undersigned, the trustees named in said mortgage, by virtue of the power and authority therein contained, as above recited, have, by Isaac N. Town, their agent and attorney, entered upon the mortgage-premises, and taken possession thereof; and whereas a majority in interest of the holders of said bonds have requested the said trustees in writing to execute the power of sale in the said deed of trust and mortgage contained; and whereas such default continuing, in pursuance of said request, the undersigned trustees as aforesaid, designated the 11th day of February, A. D. 1890, at 12 o'clock noon, as the time, and in front of the court-house, in the city of Tucson, in the county of Pima and Territory of Arizona aforesaid, as the place, of such sale, and caused notice of said sale and of the time and place thereof, to be given as provided in said deed of trust and mortgage, by publication in the Daily Star, a newspaper published in said Tucson, and at the time and place named in said notice, being the time and place aforesaid, we caused the property described in said notice, being the property hereinafter described, to be offered at public auction, by Isaac N. Town, our attorney-in-fact, as auctioneer, and the same was then and there sold to George B. Wilbur, William E. Putnam, Pliny Nickerson and William E. Pierce, who announced themselves to be a committee purchasing in behalf of the holders of bonds secured by said deed of trust and mortgage, for the sum of sixty-five thousand dollars, which amount was bid by the said George B. Wilbur, William E. Putnam, Pliny Nickerson and William E. Pierce, and was the highest bid at said sale. Now, therefore, we, Solomon S. Sleeper and Edward H. Mason, the trustees named in said deed of trust and mortgage, by virtue and in execution of the powers contained in said deed of trust and mortgage as aforesaid, and of every other power us hereto unabling, and in consideration of the sum of sixty-five thousand dollars to us paid by said George B. Wilbur, William E. Putnam, Pliny Nickerson and William A. Pierce, all of Boston, Massachusetts, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said Wilbur, Putnam, Nickerson and Pierce, all and singular, the premises and promises described
495 in said notice, being the same in the possession of said trustees, under possession taken as aforesaid, and the prop-

erty conveyed or intended to be conveyed by said deed of trust and mortgage, viz: the land grants known as Calabasas and Tuma-cacori, comprising about fifty-one thousand acres of land, excepting, however, therefrom, the town site and town of Calabasas according to the original map of said town site and surrounding country made by William S. Edwards, in May, 1878, and filed in the office of the recorder of Pima county, Arizona, aforesaid, January 27th, 1879, the mining claims and mines known as the Buena Vista, San Xavier, Western Extension San Xavier, Patterson, Arizona King, Arizona Queen, Democrat, Veta, Banner, Warsaw and Spondulix, and the Gold Mountain Tunnel, together with one water-jacket furnace, one diamond drill, and all the machinery, buildings, works, water works, tools and implements belonging thereto, or used in connection therewith. Also all the cattle now owned by said company, consisting of four thousand two hundred cows, eight hundred and twenty two-year-old heifers, fifteen hundred and forty beef steers, eight hundred and forty two-year-old steers, one hundred and sixty stags, three hundred and twenty bulls, six hundred and fifty heifer calves and six hundred and seventy steers calves, all bearing the company's brand, to wit: "83," be the said number more or less, together with the said brand; also all the horses and other live stock and all other property of said company covered by said mortgage.

To have and to hold, all and singular, the granted premises and property, with their appurtenances, unto the said George B. Wilbur, William E. Putnam, Pliny Nickerson and William A. Pierce, their survivors and the survivor of them and the heirs of such survivor, and their assigns, as joint tenants and not as tenants in common, to their own use and behoof forever. In witness whereof, we, the said Solomon S. Sleeper and Edward H. Mason, as trustees as aforesaid, hereunto set our hands and seals, this 11th day of February, A. D. 1890.

SOLOMON S. SLEEPER, *Trustee.* [SEAL.]
EDWARD H. MASON, *Trustee.* [SEAL.]

COMMONWEALTH OF MASSACHUSETTS, } ss:
City of Boston, County of Suffolk, }

On this 5th day of September, A. D. 1890, personally appeared before me, Stephen W. Reynolds, a notary public in and for said county and Commonwealth, Solomon S. Sleeper and Edward H. Mason, trustees, known to me to be persons whose names as such trustees are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office, at the city of Boston aforesaid, this 5th day of September, A. D. 1890.

[SEAL.]

STEPHEN W. REYNOLDS,
Notary Public.

Filed and recorded, at request of Isaac N. Town, September 17, 1890, at 12 m.

CHARLES A. SHIBELL,
County Recorder.

TERRITORY OF ARIZONA, }
 County of Pima, } ss :

I, Chas. A. Shibell, county recorder in and for the county of Pima, do hereby certify that the above and foregoing is a full, true, and correct copy of a deed from Solomon S. Sleeper and Edward H. Mason, trustees, to George B. Wilbur, William E. Putnam, Pliny Nickerson, & William A. Pierce, dated February 11th. 1890, as appears of record now in my office in Book 21, D. R. E., pages 571 & fol.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tucson, this 16th day of March, A. D. 1895.

[Seal Recorder Pima County, Arizona Territory.]

CHAS. A. SHIBELL,
County Recorder.

Filed March 22, 1895.

JAMES H. REEDER, *Clerk*,
 By R. L. LONG, *Dep.*

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(Ex. O.)

Whereas, we, the undersigned, George B. Wilbur, Pliny Nickerson, William E. Putnam and William A. Pierce, all of Boston, county of Suffolk, and Commonwealth of Massachusetts, having been appointed a purchasing committee by all the former holders of the bonds of the Santa Rita Land and Mining Company except \$13,000 in amount thereof, on the 11th day of February 1890, purchased the real estate and other property of said company at a foreclosure sale thereof under and in pursuance of a breach in the condition of the mortgage thereon made by the above corporation to Edward H. Mason and Solomon S. Sleeper, trustees, for the joint and equal *pro rata* benefit of the aforesaid former bondholders; and

Whereas, we have been advised that the title to said real estate may not lawfully be vested in any corporation, as had been first contemplated by said bondholders, but that an association eighty per centum of the interest in which is owned by citizens of the United States may lawfully own said real estate; and

Whereas, it is desirable that the interest of said former bondholders should not be sacrificed by any forced and disadvantageous sale of said land, but should be held until a fair price may be realized therefor; and

Whereas, said former bondholders have expressed their approval of a plan by which the said real estate may be conveyed to William Faxon, Jr., of said Boston, as trustee to hold the same for the aforesaid association of citizens of the United States, and by which said Faxon, trustee, is to issue to each of said former bondholders a certificate of his *pro rata* interest in the land, all as is hereinafter provided.

Now, therefore, know all men by these presents, that we, the

undersigned, George B. Wilbur, Pliny Nickerson, William E. Putnam, and William A. Pierce, all of Boston, county of Suffolk
497 and Commonwealth of Massachusetts, as we are a purchasing committee of the former bondholders of the Santa Rita Land and Mining Company and purchased the property hereinafter described at a foreclosure sale thereof, under, and in pursuance of, a breach in the condition of the mortgage thereon made by the above-named corporation to Edward H. Mason and Solomon S. Sleeper, trustees, in consideration of one dollar and other good and valuable considerations to us paid by said William Faxon, Jr., of said Boston, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said William Faxon, Jr., all that certain real estate situated in the county of Pima and Territory of Arizona, viz:

The land grants known as Calabasas and Tumacacori including Huevavi, and all lands and real estate therein contained, comprising about fifty-one thousand acres of land, with all improvements thereon, references to which grants may be had for more particular descriptions excepting however therefrom the town site and town of Calabasas according to the original map of said town site and surrounding country made by William S. Edwards in May 1878, and filed in the office of the recorder of said Pima county January 27, 1879, and excepting so much of said lands as may have been heretofore conveyed by us as hereinafter mentioned.

Meaning and intending herein to remise, release, and quitclaim all and singular the real estate and all our rights, titles, and interest therein, conveyed to us by the said Edward H. Mason and Solomon S. Sleeper, trustees, in pursuance of our purchase at foreclosure sale hereinbefore mentioned, and described in their deed to us dated February 11, 1890, recorded with Pima county deeds of real estate, Book 21, page 570; except so much thereof as has been heretofore released and conveyed by us to the San Xavier Mining Company,
a corporation duly established under the laws of the State of
498 Colorado by our certain deed dated June 1, 1891.

Also meaning and intending herein to remise, release and quitclaim all rights and privileges, appurtenances and easements and all our rights, titles and interests in all and singular real estate above described, as herein released and quitclaimed, whether the same may have been reduced to possession by us or not, and as well that within possession of any disseizors as all or any of which we have peaceable possession it being our purpose herein to include all rights, titles and interests which are or might be vested in us or any former owner, by, through or under whom we are at liberty to, or may as of right, claim.

To have and to hold, all and singular the above-released premises, with all rights, privileges, easements and appurtenances thereto belonging unto the said William Faxon, Jr., and his heirs and assigns, successors in the trust herein created to their own use and behoof forever, but in trust nevertheless for the following uses and none other.

First. To hold the same and all accumulations, proceeds, and

income thereof and all other property received by or accruing to said trustee in said trust for the equal *pro rata* benefit of the aforesaid former holders of the aforesaid bonds amounting to \$237,000, represented by us as aforesaid, or their heirs, executors, administrators and assigns, holders of the certificates of interest hereunder, more than eighty per centum of which is held by citizens of the United States as hereinafter described.

Second. Said Faxon, and his successor and successors in said trust, shall, without delay, issue to each of such former bondholders, represented by us as aforesaid or his representatives, or assigns, a certificate of such *pro rata* interest in the above-described real

estate as should pertain to his said former bonds under said
499 foreclosure, in form substantially as follows:

No. —.

Shares —.

United States Citizenship Association in Arizona.

Santa Rita Land Grants.

Whole number of shares (—).

This is to certify that — —, being a citizen of the United States, is entitled to a *pro rata* interest of — shares in the above-named association and the lands and property thereof, under and in accordance with the terms of a certain deed creating a trust in respect thereof made by George B. Wilbur, Pliny Nickerson, William E. Putnam and William A. Pierce to William Faxon, Jr., trustee, dated — day of —, recorded in —; to which deed reference is hereby made, and this certificate and the interests herein represented and secured are subject to all of the trusts, terms, conditions and restrictions applicable thereto, in said deed mentioned or referred to. This certificate with all interests herein represented is transferable only to citizens of the United States, and only on the proper books of transfer kept by said William Faxon, Jr., trustee, or his successors in said trust, and upon the return of this certificate to him or his successors, properly endorsed.

In witness whereof, I, the said William Faxon, Jr., trustee, herunto set my hand this — day of —, 189—.

Third. That said Faxon, and his successors in said trust shall hold, enforce, protect and defend all the real estate herein released and quitclaimed and all rights, titles and interests in and to the same and all net income and proceeds thereof, and all other prop-

erty received by said trustee accruing or pertaining to said
500 trust to and for the equal *pro rata* benefit of the holders of the certificates aforesaid which certificates and all interests therein represented are and shall be taken to be personal property for all the purposes hereof and issued to and accepted by every holder thereof for himself and his heirs, executors, administrators and assigns in lieu of all right to partition of said land and property and of any and all other rights and interests pertaining to the former mortgage bonds of said Santa Rita Land and Mining Com-

pany in the land and real estate and other property herein released and quitclaimed. And said Faxon and his successor and successors shall sell and reduce all and singular said trust property to cash with all diligence avoiding great sacrifice and subject to the provisions hereof, and shall distribute to and among said certificate-holders *pro rata* to their respective interests and from time to time the surplus net proceeds and income of said trust not otherwise prudently required for the administration and protection thereof and all such distributable payments shall be endorsed upon said certificates as and when received by the holders thereof and upon the surrender of any of the certificates aforesaid each of the new certificates which shall at any time be issued by said trustee or any successor in said trust in exchange for said surrendered certificate or certificates shall bear a memorandum thereon of the amount of payments which have been made upon said surrendered certificate or certificates in exchange for which said new certificate is issued, and upon the distribution and payment of the last dividend which may pertain to said certificates or notice by said trustee, at the time that the same has been paid such certificates shall be surrendered to such trustee and said trust shall thereupon be closed and all trustees therein thereupon discharged.

Fourth. And said Faxon, or his successor or successors in said trust may sell, lease, farm-let or release all or any of said
501 real estate or may mortgage the same if in his judgment it is necessary to protect the property all so far as may be done consistently with the laws of the United States and of said Territory of Arizona, may cultivate the same or any part thereof, and may irrigate and improve the same or any part thereof, and make, ratify, adopt and perform contracts and agreements for such cultivation, irrigation and improvement and may license the pasturage and the cropping of the herbage on said real estate and may give license for cattle and other domestic animals to roam over and crop the grass, and herbage and enjoy all the stock watering privileges and to be cared for in the buildings and improvements upon all or any of the real estate herein conveyed, and especially is herein directed and authorized upon the request of, to grant such a license or licenses unto the Santa Rita Land and Cattle Company, except as to so much thereof and improvements thereon as the said Faxon or any successor in his trust may devote to irrigation or improvement, or occupy and cultivate for farming purposes and the care and harvesting of the products thereof, all for a period of seven years from April 28, 1892, terminable at the option of said Santa Rita Land and Cattle Company upon twelve months' notice in writing given at any time within five years from said date but after said five years if no such notice shall have been previously given said cattle company shall continue to pay and render the consideration for said license or licenses for a period of two years more; the consideration for the use and enjoyment of said license shall not be without or less than sufficient for the keeping of said real estate and all improvements thereon in good repair and the prompt payment by said corporation or its successors and assigns when and as due of all

taxes and assessments upon said real estate for each and every year during any part of which said license is used or enjoyed
502 upon said premises or any part thereof, or included within the period of notice to terminate the same as aforesaid. Said license or licenses not to be terminable by said Faxon or any successor in his trust, if, and so long as said corporation and its successors and assigns during the period of seven years aforesaid keep said premises and all improvements thereon in repair and pay promptly all taxes and assessments which may be due or laid upon the same, provided, nevertheless, that such license is to have force only so far as without prejudice to the title of said trustee may be consistent with the laws of the Territory of Arizona and of the United States.

Fifth. No purchaser, mortgagee, lessee or licensee of said Faxon, or any successor in his trust of any or all of the property and real estate herein conveyed shall be required to see to the proper application to the purposes of this trust of the money or other consideration paid to said trustee for or upon such sale, mortgage, lease or license.

Sixth. And we, the undersigned, said Nickerson, Wilbur, Putnam and Pierce, do hereby constitute and appoint the said Faxon and his successor and successors in the trust herein created to be our attorney and attorneys irrevocable, with full power of substitution, and such substitutions at his and their pleasure to revoke in his own name and in our names, and in the name and names of all persons, parties or corporations by, through or under whom we may claim with right to use their name or names, to possess, occupy, demand, sue for, recover, receive, defend and protect, compromise and adjust conflicting claims in respect of and release the land, real estate, titles, interests and property of every nature herein conveyed or intended to be conveyed, and all increase, rents, products, proceeds and appurtenances thereof, and to institute, prosecute
503 or defend suits and processes at law or in equity and to make, execute, enseal, acknowledge and deliver all such conveyances, deeds, leases, licenses, agreements and writings, and to do and perform all acts and things in, about, or touching the premises or any part thereof as said trustee or his successor or successors may deem necessary, expedient or convenient to carry into effect the trusts and purposes herein declared, contained or implied as fully and as effectually as we ourselves or any person, parties or corporation whose names we might use as aforesaid could do if personally present and acting; and in all cases said trustee or any successor in his trust shall be authorized to pay out reasonable compensation as he shall deem proper to all attorneys, officers, agents and servants whom he may employ and to incur other reasonable expense in carrying out said trust as against all or any of said trust property saving us harmless from all personal liability for cost, voluntarily incurred by said trustee, on account thereof and from all lawful liability incurred by us in the premises with and out of the property of said trust available therefor.

Seventh. Said Faxon and any successor or successors in said trust

shall have and be entitled to just compensation for all services rendered in connection with said trust to be retained together with such an amount as shall reimburse said trustee and his successor and successors respectively for all reasonable expense incurred by any of them in said trust as hereinbefore authorized from the income or proceeds of the real estate herein conveyed or from any other funds subject to said trust which may come to the hands of said trustee and his successors.

Eighth. And it is expressly provided and hereby agreed that said Faxon or any successor or successors in said trust or his or their executors or administrators shall be liable or accountable only 504 & 505 for and in respect of such property and interests in the premises as shall actually come into his or their possession and control; nor shall any such trustee be liable for the default or misdoing of an agent or employee except the same shall arise by or through his own wilful default or neglect. Said trustee may resign at any time on one month's notice in writing of an intention so to do given to Solomon S. Sleeper, George B. Wilbur and William A. Pierce, or the survivors or survivor of them.

Ninth. This trust is upon the further provision that any vacancy in the office of trustee under this instrument caused by death, resignation, inability to act, or otherwise, shall, upon a request in writing of a majority in interest of said certificate-holders under the United States Citizenship Association herein created be filled by such person or persons as the president of the Boston Safe Deposit and Trust Company of Boston, Massachusetts, for the time being, shall in writing appoint and such president shall also have the power of removal from said trust upon the same request. The president of the said Boston Safe Deposit and Trust Company in creating or filling any vacancy in said trust shall under his hand and seal in writing endorsed herein or upon any duplicate hereof, declare such vacancy and appoint a successor or successors in the trust herein created and upon such appointment all the property, right, title and interest, choses in action, powers and benefits herein released, conveyed or conferred to or upon said Faxon, or intended so to be, shall thereby and upon acceptance of said trust by such appointee, be vested in and used, exercised and enjoyed by, such successor or successors without other or further instrument or conveyance.

In witness whereof, we hereunto set our hands and seals 506 in duplicate this ninth day of May, A. D. 1892.

GEO. B. WILBUR.	[SEAL.]
WILLIAM E. PUTNAM.	[SEAL.]
WILLIAM A. PIERCE.	[SEAL.]
PLINY NICKERSON.	[SEAL.]

(Five words stricken out and forty-one interlined before execution.)

COMMONWEALTH OF MASSACHUSETTS, }
City of Boston, County of Suffolk, } ss:

On this ninth day of May, 1892, personally appeared before me, Charles Thornton Davis, a notary public in and for said county and Commonwealth, George B. Wilbur, William E. Putnam, and William A. Pierce, of the purchasing committee of the former bondholders of the Santa Rita Land and Mining Company, known to me to be the persons whose names as such committee are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed and as their free will and deed.

Given under my hand and seal of office, at the city of Boston aforesaid, this ninth day of May, 1892.

[SEAL.]

CHARLES THORNTON DAVIS,

Notary Public.

(Fourteen written words in acknowledgment certificate inserted and two typewritten words stricken out.)

I accept the above trust.

In witness whereof I hereunto set my hand and seal this ninth day of May, 1892.

WILLIAM FAXON, JR. [SEAL.]

COMMONWEALTH OF MASSACHUSETTS, }
City of Boston, County of Suffolk, } ss:

Before me, Charles Thornton Davis, a notary public in and for said county and Commonwealth, on this day personally appeared Pliny Nickerson, known to be to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed and as his free act and deed.

Given under my hand and seal of office this tenth day of May, A. D. 1892.

CHARLES THORNTON DAVIS,

[SEAL.]

Notary Public.

Endorsed: Recorded, Pima county, Territory of Arizona, request of William Faxon, Jr., June 25, 1892, at 10 a. m., in Book 23, Deeds Real Estate, at pages 504 to 512, inclusive. (Filed Jan. 29, 1894. James H. Reeder, clerk, by R. L. Long, dep.)

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(*Entry in Toma de Razon of Nogales Grant.*)

In the United States Court of Private Land Claims.

WILLIAM FAXON, JR., Trustee, *et al.* }

vs.

THE UNITED STATES OF AMERICA *et al.* }

Copy of entry in book of Toma de Razon in office of the treasurer general of the State of Sonora, at Hermosillo, Sonora, Mexico, being on top of the reverse of leaf 64 of said book:

"En el mismo dia, 7 de Enero de 1845, se espidio titulo de merced de siete u medio sitios y dos caballerias escasas de tierra par cria de ganado mayor y caballada comprendidos en los huevos valdios que se hallen situados entre los linderos del norte del rancho de la Casita y los del Poniente de la mission de Tumacacori y Calabasas en la Pimeria Alta, partido de San Ygnacio a favor de Don Jose Elias y sus padres, Fran-co. Gonzales y Da. Balvanera Redondo, vesinos del pueblo de Ymuris.

LOPEZ."

Translation of Above.

"On the same day, January 7, 1845, title deed of seven and one-half sitios and two short caballerias of land for raising cattle and horses was issued, comprising the remnants of public lands that exist located between the north boundaries of the ranch of La Casita and those west of the mission of Tumacacori and Calabasas, in Pimeria Alta, in the district of San Ygnacio, in favor of Don Jose Elias and of his parents Don Francisco Gonzales and Da. Balvanera Redondo, residents of the pueblo of Ymuris.

LOPEZ."

It is hereby stipulated by and between the plaintiff and defendants in the above-entitled case that the foregoing is a true and correct copy of the record of the Los Nogales de Elias grant as the same is found in the proper book of Toma de Razon in the archives of Mexico, in the office of the treasurer general of the State of Sonora, at the city of Hermosillo, and that the same was admitted in evidence with the same force and effect as a certified copy might be or a proven copy might be.

FRANCIS J. HENEY,
Att'y for Plaintiff.
MATT. G. REYNOLDS,
U. S. Att'y.

508 [Endorsed:] No. 8. F. 6. In the court of private land claims, Arizona district. Wm. Faxon, Jr., trustee, *et al. vs.* The United States *et al.* Copy of an entry and translation in book of Toma de Razon. Filed Jan. 16, 1894. James H. Reeder, clerk, by R. L. Long, dep. cl'k. Francis J. Heney, attorney for Wm. Faxon, Jr.

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EXH. III.

This indenture, made the 21st day of May in the year of our Lord one thousand eight hundred and eighty-seven, between Luisa G. de Bustamante, Jesus Aguilar de Aceguera, Francisco Aceguera, Carmen O. De Esprui, Agustina O. de Robinson, Dolores Ocegüera, all of the Port of Guaymas, Sonora, Mexico, the parties of the first part, and Santiago Ainsa, of Tucson, Arizona Territory, United States of America, the party of the second part, witnesseth: that the said parties of the first part for and in consideration of the sum of one hundred dollars money of the United States of America to them in

hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever all that certain lot and parcel of land, situate lying and being in the county of Pima, Territory of Arizona in the United States of America and bounded and particularly described as follows, to wit:

Eleven-twentieths ($\frac{11}{20}$) undivided interest in and to all the right, title and interest which the parties of the first part have in and to all lands and real property and estate in the said county of Pima, Territory of Arizona, United States of America.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold all and singular the said premises together with the appurtenances, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have
510 hereunto set their hands and seals the day and year first above written.

LUISA G. DE BUSTAMANTE.	[SEAL.]
AGUSTINA O. DE ROBINSON.	[SEAL.]
DOLORES OCEGUERA.	[SEAL.]
F. OCEGUERA.	[SEAL.]
JESUS A. DE OCEGUERA.	[SEAL.]
CARMEN O. DE ESPRUI.	[SEAL.]

Signed, sealed, and delivered in the presence of—
FERNANDO MA. ASTIAZARAN.

ESTADOS UNIDOS MEXICANOS, { ss :
Estado de Sonora, Distrito de Guymas,

En este día 21 de Mayo del año 1887 ante mí Fernando M. Astiazaran, Notario Publico, comparacieron Luisa G. de Bustamante, Jesus Aguilar de Ocegüera, Francisco Ocegüera, Carmen O. de Esprui, Agustina O. de Robinson, y Dolores Ocegüera, cuyos nombres estan suscritos al anexo instrumento como partes en el, a quienes conosco personalmente ser los mismos personas que suscribieron y otorgaron el dicho anexo instrumento compartes en el, y cada uno individualmente firmado y otorgado el dicho documento libre y voluntariamente, y para los usos y fines que en el mismo se expresan.

Y, Agustina O. de Robinson, esposa de Alfredo Robinson, y Luisa G. de Bustamante, esposa de Agustin Bustamante, personas a quienes conosco personalmente, y quienes firmaron y otorgaron el anexo documento como partes, fueron informados por mí del contenido del dicho documento, y me aseguraron que firmadan y ortogaban al mismo documento con su entera voluntad, y habiendolos yo examinado a cada uno, separadamente de sus respectivos maridos, y sin que estos oyesen lo que se decia, cada una de seguro que firmaban

y otorgaba el dicho documento libre y voluntariamente, sin temor o compulsion, o por influencia de sus respectivos maridos, y que no desea retractarse del otorgamiento del dicho documento.

En testimonio de lo cual firmo y sello este certificado en Guaymas, Sonora, Mexico, en el día y fecha que arriba se mencion.

[SEAL.]

FERNANDO MA. ASTIAZARAN, N. P.

Counsulate of the United States of America at Guaymas, Mexico.

I, Alexander Willard, consul of the United States at Guaymas, Mexico, do hereby certify that the seal and signature of Lic. Fernando Ma. Astiazaran to the foregoing certificate are true and genuine and are the same that he uses in all his official acts as are entitled to full faith and credit, and also that said person is a notary public under the laws of Mexico.

Given under my hand and seal of the consulate at Guaymas, the (21) twenty-first day of May, A. D. (1887) one thousand eight-hundred and eighty-seven.

[SEAL.]

A. WILLARD,

U. S. Consul.

(Endorsed :) Filed and recorded, at request of Jeffords & Franklin, 25 June, A. D. 1887, at 3.30 p. m., Book 14, Deeds of Real Estate, pages 180, 181, 182. A. B. Sampson, county recorder. Filed

Jan. 25, 1894. James H. Reeder, clerk, by R. L. Long, dep.

511 [Endorsed:] No. 8. Luisa G. de Bustamante *et al.* to Santiago Ainsa. F No. 10. Exh. 3. Deed. Dated May 21, 1887.

Wm. Faxon, Jr., *et al.* vs. The U. S. *et al.* Calabasas grant. Filed Jan. 25, 1894. S. M. Franklin, Rochester Ford, attorneys for claimants, Astiazaran *et al.*

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Ex. IV.

This indenture, made the 16th day of April in the year of our Lord one thousand eight hundred and eighty-seven between Francisco Gandara, Miguel Gandara, Jose M. Gandara, Ana Gandara, Carmen Gandara and Trinidad Aguilar, all of the State of Sonora, Mexican Republic, the parties of the first part, and Santiago Ainsa, of the Territory of Arizona, United States of America, the party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars, money of the United States of America, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all those certain lots and parcels of land, situate, lying and being in the county of Pima Territory of Arizona, in the U. S. of America and bounded and particularly described as follows, to wit:

Eleven-twentieths ($\frac{11}{20}$) undivided interest in and to all the right, title and interest which the parties of the first part have in and to all lands and real property and estate in the said county of Pima, Territory of Arizona, United States of America.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises together with the appurtenances, unto the said party of the second part his heirs and assigns forever.

513 In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

F. GANDARA.

[SEAL.]

M. GANDARA.

[SEAL.]

J. M. GANDARA.

[SEAL.]

ANA GANDARA.

[SEAL.]

CARMEN GANDARA.

[SEAL.]

TRINIDAD AGUILAR.

[SEAL.]

Signed, sealed, and delivered in the presence of—

G. M. PERALTA.

MAN. Y ASTIAZARAN.

ESTADOS UNIDOS MEXICANOS, }
Estado de Sonora, Distrito de Hermosillo, } 88:

El Liciendiado Gabriel M. Peralta, Notario Publico, certifico: que en la ciudad de Hermosillo, a los diez y seis dias del mes de Abril de mil ochocientos ochenta y siete, comparacionen ante mi los Senores F. Gandara, M. Gandara, J. M. Gandara, y Senoritas Ana Gandara, Carmen Gandara y Trinidad Aguilar, cuyos nombres subscriben el instrumento precedente u cuyos personas me son bien conocidos y las mismas que firman ortorgan y ejecutan el anterior instrumento como partes en el interesadas y formalmente me declararon que lo habian ortogando y ejecutado de su libre y espontanea voluntad. y para los usos y objetos que en el se mencionan.

En testimonio de lo cual he firmado y sellado en la expresada fecha y lugar el presente certificado.

LIC. GABRIEL M. PERALTA,

[SEAL.]

Notario Publico.

Stamp.

Consulate of the United States of America at Guaymas, Mexico.

I, Alexander Willard, consul of the United States of America for Guaymas, Mexico, do hereby certify that the seal and signature of Lic. Gabriel M. Peralta, notary public, to the foregoing certificate are true and genuine, well known to me, and are the same that he uses in all his official acts and as such are entitled to full faith and credit, and also that said person is a notary public under the laws of Mexico.

Given under my hand and seal of the consulate, at Guaymas,

Mexico, this (21) twenty-first day of May, A. D. (1887) one thousand eight hundred and eighty-seven.

[SEAL.]

A. WILLARD.

(Endorsed :) Filed and recorded, at request of Jeffords & Franklin, 20th June, A. D. 1887, at 3.30 p. m., Book 14, Deeds of Real Estate, pages 177, 178, 179. A. B. Sampson, county recorder. Filed in the office of the clerk court of private land claims Jan. 25, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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EXHIBIT V.

This indenture, made the 14th day of April in the year of our Lord one thousand eight hundred and eighty-seven

Between Victor Aguilar, Fernando Aguilar, Anita Aguilar Jesus Aguilar and Carmen Aguilar, all being the only children of Jose Aguilar, all of Hermosillo, State of Sonora, Republic of Mexico, the parties of the first part, and Santiago Ainsa, of Tucson, Arizona Territory, United States of America the party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever all those certain lots, and parcels of land, situate lying and being in the county of Pima, Territory of Arizona, of U. S. of America and bounded and particularly described as follows, to wit:

Eleven-twentieths ($\frac{11}{20}$) undivided interest in and to all rights, title and interest in and to all lands and real property or estate in the said county of Pima, Territory of Arizona, which they have or belong by inheritance or by any title to the parties of the first part.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances unto the said party of the second part his heirs and assigns forever.

515 In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

V. AGUILAR.	[SEAL.]
FERNANDO AGUILAR.	[SEAL.]
ANITA AGUILAR.	[SEAL.]
JESUS AGUILAR.	[SEAL.]
CARMEN AGUILAR.	[SEAL.]

Signed, sealed, and delivered in presence of—

H. S. GABILONDO.
FERNANDO YNIGO.

ESTADOS UNIDOS MEXICANOS, }
Estado de Sonora, Distrito de Hermosillo. }

El Licenciado Hilario S. Gabilondo, Notario Publico: Certifico: Que en la ciudad de Hermosillo, a los catorce dias del mes de Abril de mil ochocientos ochenta y siete, comparecieron ante me, los Senores Dn. Victor Aguilar, Doctor Don. Fernando Aguilar, y las Senoritas Dona Anita Aguilar, Dona Jesus Aguilar y Dona Carmen Aguilar, cuyos nombres suscriben el instrumento precedente, y cuyos personas me son bien conocidas y las mismas que firman, otorgan y ejecutan el anterior instrumento, como partes en el interesadas, y quienes formalmente me declararon que lo habian otorgado y ejecutado de su libre y espontanea voluntad, y para los usos y objetos que en el se mencionan. Certifico ademas que antes de fimar fueron puestos las palabras "they have or."

En testimonio de lo cual, he firmado y sellado en la expresada fecha, en presente certificado.

[SEAL.]

LIC. H. S. GABILONDO,
Notario Publico.

Consulate of the United States of America at Guaymas, Mexico.

I, Alexander Willard, consul of the United States of America for Guaymas, Mexico, do hereby certify that the seal and signature of Lic. H. S. Gabilondo, notary public, to the foregoing document is true and genuine, well known to me, and as such are entitled to full faith and credit, and that said person is a notary public under the laws of Mexico.

Given under my hand and seal of the consulate, at Guaymas, this twenty-first (21) day of May, A. D. (1887) one thousand eight hundred and eighty-seven.

[SEAL.]

A. WILLARD,
U. S. Consul.

(Endorsed :) Filed and recorded, at request of Jeffords & Franklin, 25th June, A. D. 1887, at 3.30 p. m., Book 14, Deeds of Real Estate, pages 175, 176, 177. A. B. Sampson, county recorder. Filed in the office of the clerk court of private land claims Jan. 25, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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Ex. VI.

This indenture, made the 21st day of May in the year of our Lord one thousand eight hundred and eighty-seven

Between Dolores G. de Astiazaran of Guaymas, Sonora, Mexico, the party of the first part and Santiago Ainsa of Tucson, Arizona Territory, United States of America the party of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of ten dollars to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of

the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land lying situate and being in the county of Pima, Territory of Arizona, particularly described as follows, to wit:

Five-twentieths ($\frac{5}{20}$) undivided interest in and to all the right, title and interest which the party of the first part has in and to all lands and real property and estate in the United States of America.

Together, with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular, the said premises together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, said party of the first part has hereunto set her hand and seal the day and year first above written.

DOLORES G. DE ASTIAZARAN. [SEAL.]

Signed, sealed, and delivered in the presence of—

A. WILLARD.

GEO. WOOD.

517 REPUBLIC OF MEXICO, }
State of Sonora, Guaymas, } ss :

Consulate of the United States of America at Guaymas, Mexico.

On this 21st day of May, A. D. one thousand eight hundred and eighty-seven, personally appeared before me, A. Willard, consul of the United States of America at Guaymas, Dolores G. de Astiazaran, whose name is subscribed to the annexed instrument as party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as party thereto, who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Dolores G. de Astiazaran, wife of Fernando M. Astiazaran, being known to me to be the person whose name is subscribed to the annexed instrument as a party thereto, was by me first made acquainted with the contents of the said instrument and thereupon she acknowledged to me, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.]

A. WILLARD,

U. S. Consul.

Filed in the office of the clerk court of private land claims Jan. 25, 1894.

JAS. H. REEDER, Clerk,
By R. L. LONG, Deputy.

Know all men by these presents, that I, Santiago Ainsa of the county of Pima and Territory of Arizona, party of the first part, for and in consideration of the sum of ten dollars cash in hand to me this day paid by Frank Ely of the city of Saint Louis, State of Missouri, party of the second part, the receipt whereof is hereby acknowledged, and in consideration of the performance by the said party of the second part of certain condition- and trusts to be hereafter set forth and fully stated in a declaration of trusts to be made and executed by the said party of the second part have granted, bargained, sold and conveyed, and by these presents do hereby grant, bargain, sell and convey unto the said party of the second part an undivided five forty-eighths interest to himself, and his heirs forever, of all my right, title and interest of every nature, kind, character and description whatsoever either in law or in equity in and to all the following-described lands lying being and situate in the county of Pima, Territory of Arizona, being all of the interest of the said party of the first part in and to all lands, tenements, hereditaments and appurtenances, or estate or interest conveyed, granted, bargained or sold to the said party of the first part by the following persons, to wit :

By Francisco, Gandara, Miguel Gandara, Jose Maria Gandara, Carmen Gandara, Ana Gandara and Trinidad Aguilar by their certain deed made, executed and delivered on the 16th day of April 1887 and duly acknowledged by them before Gabriel M. Peralta, notary public at Hermosillo, Republic of Mexico upon said 16th day of April 1887.

By Victor Aguilar, Fernando Aguilar, Anita Aguilar, Jesus Aguilar and Carmen Aguilar by the certain deed made, executed and delivered on the 14th day of April, 1887, and duly acknowledged by them before H. S. Gabilondo, notary public at Hermosillo on the 14th day of April, 1887.

By Luisa G. de Bustamante, Jesus Aguilar de Oceduera, Francisco Ocegüera, Carmen O. de Espriu, Agustina O. de Robinson and Dolores Ocegüera by their certain deed made, executed and delivered on the 21st day of May, A. D. 1887 and duly acknowledged by them before Fernando M. Astiazaran, notary public at Guaymas, Mexico, on the same day.

And by Dolores G. de Astiazaran by her certain deed made executed and delivered on the 21st day of May, 1887 and duly acknowledged by her before A. Willard, consul of the United States at Guaymas, on the same day.

And I have also granted, bargained, sold and conveyed and by these presents do hereby grant, bargain, sell and convey unto the said party of the second part all of the balance and residue of my right, title and interest in and to all of the above-described land, as trustee: the said party of the second part as such trustee is to bring and institute and prosecute to final judgment all necessary suits or actions at law or in equity for the purpose of recovering all of the

said land and property from any and all persons now in possession of said land or property of any part thereof, and to institute and prosecute to final judgment all necessary suits or actions at law or equity as may be required against each and every person whomsoever who may claim or assert any right, title or interest of any nature or character whatsoever in or to any of the above-described lands or property (except the persons named as the *cestuis que trust*. under that certain declaration of trust to be made and executed by the party of the second part, as trustee) and in the event that the

520 said party of the second part, trustee, shall fail, neglect or refuse to make and execute the declaration of trust herein provided for or shall fail, or refuse or for any cause be unable to fully carry out and perform the conditions and provisions set forth in this deed and in the declaration of trust to be made and executed in connection with this deed then Rochester Ford of St. Louis, in the county of — and State of Missouri may be and is hereby fully authorized to designate in writing some other person to act as trustee in the premises, such other person when so appointed as trustee, shall have all rights, power and authority hereby granted and conferred upon said party of the second part as trustee.

To have and to hold an undivided five forty-eighths interest in and to the above granted and conveyed premises, land and property unto the said party of the second part, his heirs and assigns forever; and to have and to hold the balance and residue of the above granted and conveyed premises, lands and property, unto the said party of the second part, as trustee, his successors and assigns forever.

Together with all and singular the improvements, appurtenances and hereditaments thereunto belonging or in anywise appertaining, upon the terms conditions and considerations expressed in this instrument, and for the purposes set forth in the said declaration of trust herein provided for.

In witness whereof, the said party of the first part hath hereunto set his hand and seal this 22nd day of June in the year of our Lord one thousand eight hundred and eighty-seven.

SANTIAGO AINSA. [SEAL.]

Witness:

S. M. FRANKLIN.

EARL H. WEBB.

521 TERRITORY OF ARIZONA, }
County of Pima, } ss :

On this 22nd day of June, in the year one thousand eight hundred and eighty-seven, before me, Earl H. Webb, a notary public in and for the said county of Pima, personally appeared Santiago Ainsa, personally known to me to be the same person described in and whose name is subscribed to the within instrument and who executed the same, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.
[SEAL.] EARLL H. WEBB,

Notary Public.

(Endorsed :) Filed and recorded, at request of Jeffords and Franklin, 25th June, A. D. 1887, at 3.45 p. m., Book 14, Deeds of Real Estate, pages 184, 185, 186, 187. A. B. Sampson, county recorder. Filed in the office of the clerk court of private land claims March 25, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

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EXHIBIT 7½.

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of FRANK ELY, Deceased.

TERRITORY OF ARIZONA, }
County of Pima, } s. :

I, John S. Wood, probate judge of the county of Pima, Territory of Arizona, and *ex officio* clerk of the probate court of said county, do hereby certify that Santiago Ainsa was on the 23rd day of November, 1891, duly appointed by the said probate court of Pima county administrator, with will annexed, of the estate of Frank Ely, deceased; that he duly qualified as such, and that on said day letters of administration, with will annexed, were duly issued to him as administrator of said estate of Frank Ely, deceased, and that said letters have not been revoked, and that said Santiago Ainsa is now the duly acting and qualified administrator of said estate.

In witness whereof I have hereunto set my hand and the seal of said probate court this 18th day of February, A. D. 1892.

[SEAL.]

JOHN S. WOOD,

Judge and ex Officio Clerk.

Filed in the office of the clerk court of private land claims Jan. 25, 1894.

JAS. H. REEDER, Clerk,

By R. L. LONG, Deputy.

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Ex. VIII.

Deraignment of Title of Santiago Ainsa, Administrator, etc., to the Calabazas Grant.

I.

The grant called the Tumacacori, Calabazas, and Huavavi was made by the government of Mexico to Francisco Alexjandro Aguilar in April, 1844.

Aguilar was married to Ampara Azcona. He died in 1876; his wife died in 1881. They left no issue.

The following is the family tree of said Francisco A. Aguilar and of his father Victor and his brother Maria:

(Here follows genealogical table, marked p. 525.)



526 Santiago Ainsa, as administrator, etc., deraigns titles by deed from all the brother- and sisters, nieces and nephews, of said Francisco A. Aguilar.

II.

List of Deeds Filed.

1. Deed from Victor, Fernando, Anita, Jesus, and Carmen Aguilar to Santiago Ainsa, dated April 14, 1887.

2. Deed from Francisco, Miguel and Jose, Ana and Carmen Gandara and Trinidad Aguilar to Santiago Ainsa, dated April 16, 1887.

3. Deed from Luisa G. de Bustamente, Jesus and Francisco de Ocegüera, Carmen O. de Espriu, Agustina O. de Robinson, and Dolores Ocegüera to Santiago Ainsa, dated May 21, 1887.

4. Deed from Dolores G. Astiazaran to Santiago Ainsa, dated May 21, 1887.

5. Deed from Santiago Ainsa to Frank Ely, for himself and as trustee, dated June 22, 1887.

6. Appointment of Santiago Ainsa as administrator, with will annexed, of Frank Ely, deceased.

S. M. FRANKLIN,
ROCHESTER FORD,

Attorneys for Santiago Ainsa, Adm'r.

Filed in the office of the clerk court of private land claims Jan. 25, 1894.

JAS. H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

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Ex. X.

I, Miguel Gandara, residing in the State of Sonora, Mexico, do hereby authorize Mr. Guillermo Andrade, of San Francisco, Cal., United States of America, to proceed and execute the sale of the ranch "Calabazas," situated in Pima county, Territory of Arizona, United States. Said authorization I make in virtue of the power of attorney that my father, Mr. Manuel Gandara, transferred to me and which I hereby affix to the present authorization.

I hereby also transfer said power of attorney by virtue of the same right by which it was transferred to me, only *aggregating* to give the preference of the sale of said ranch to Mr. G. Ris, in compliance with a contract entered into between me and said Mr. G. Ris, dated on the 19th day of October, eighteen hundred and sixty-nine, which contract I hereby also affix to this document.

Mazatlan, April 6th, 1870.

MIGUEL GANDARA.

CONSULATE OF THE UNITED STATES,
MAZATLAN, April 7th, 1870.

On this the seventh day of April, 1870, before me, the undersigned, commercial agent of the U. S. A. for the port of Mazatlan,

personally appeared Miguel Gandara, known to me to be the person described in and who executed the foregoing document, and acknowledged the same under oath to be his act, and declared that he had executed the same freely and voluntarily for the uses and purposes therein mentioned.

Given under my hand and the seal of this consulate the day and year before mentioned.

[U. S. Consulate Mazatlan Seal.]

ISAAC SESSON,
U. S. Com'l Agent.

(Filed March 26, 1895.)

JAMES H. REEDER, *Clerk,*
By R. L. LONG, *Dep.*)

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Ex. XI.

Know all men by these presents: that we Manuel Maria Gandara and Miguel Gandara of the city of Guaymas, in the State of Sonora Republic of Mexico, have this day made, constituted and appointed D'n Five-dollar Mexican stamp of Guaymas here affixed and cancelled. Guillermo Andrade of the city and county of San Francisco, California (one of the United States of America)

our true and lawful attorney for us an- in our names place and stead, to enter into and take possession of the following-described pieces and parcels of land, situated in the county of Pima and Territory of Arizona, and within the limits of the United States of America and described as follows, to wit: Three certain pieces or parcels of land lying and being in the county of Pima and Territory of Arizona, and within the limits of the United States and best known as the "Tumacacori" Calabasas and Huevavi grants and fully described by the original deeds from Alexo Garcia Conde intendente of provincia of Real Hacienda to an Indian community by letters patent bearing date April 2d, 1807, and the same lands being afterwards sold at public auction by order of the supreme government of Mexico and bought by Francisco Alejandro Aguilar and conveyed to him by letters patent from the supreme government of Mexico, bearing date April 19th 1844, and subsequently conveyed by Francisco Alejandro Aguilar to D'n Miguel Gandara and more fully described in the Book of Records pages 36, 37 & 38 in the city of Guaymas, State of Sonora Republic of Mexico and containing six leagues more or less according to the survey made by order of the Mexican government.

To grant, bargain, sell and convey the same or any portion thereof for such sum or price, and on such terms as to our said attorney D'd Guillermo Andrade may deem best, and for us and in our names or otherwise, to make, execute, acknowledge and deliver good and sufficient deeds of conveyance for the same, and such other instruments in writing as may be necessary, and collect, recover and receive any and all sums of money that

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may become due and owing to us from such sale, and to give receipts and acquittances therefor.

Fifty-cent Mexican Guaymas stamp here affixed and cancelled. Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present, hereby ratifying and confirming all that our said attorney shall lawfully do or cause to be done by virtue hereof.

Witness our hands and seals at the city and port of Guaymas, State of Sonora, Republic of Mexico this *de Sonora* day of Mexico, 1876. Julio 1, 1876.

M. M. GANDARA. [SEAL.]
M. GANDERA. [SEAL.]

Guaymas.

Signed, sealed, and delivered in presence of Cayerano L. Yuigo y Francisco Yrigoyan—

C. L. THUGO.
F. TRIGRIGEN.

(Endorsed :) Julio 1° de 1876. Pasó ante mi Matias Moran, E. P. N. P.

530 GOBIERNO Y COMDA., {
Militar del Estado de Sonora. }

Certifico que la firma que antecede, es la que usa el Notario Publico Co. Matias Moran en todas sus actos oficiales y particulares.

Guaymas, Julio 1, de 1876.

V. MARISCAL.

Consulate of the United States of America.

[CONSULATE SEAL.] GUAYMAS, MEXICO, *July 7th*, 1876.

I, A. F. Ganison, vice-consul of the U. S. for Guaymas, Mexico, and the dependencies thereof, do hereby certify that the signature of "V. Mariscal," military governor of the State of Sonora, Mexico, to the above paper is his true, genuine signature, well known to me to be the same he uses in all his official and private acts, and as such is entitled to full faith and credit.

And I further certify that the said V. Mariscal is the military and acting civil governor of the State of Sonora, duly appointed and exercising the full functions of his said office, military governor of Sonora, and as such duly qualified and authorized to certify and authenticate signatures and other notarial acts.

In witness whereof I have herewith set my hand and affixed the seal of the U. S. consulate this 7th day of July, 1876.

[SEAL OF CONSULATE.]

A. F. GANISON,
U. S. Vice-Consul.

531 (Endorsed :) Power of attorney. Manuel Maria Gandara and Miguel Gandara to Guillermo Andrade. Dated — —, 1876. Filed and recorded, at request of Claude Anderson, January 27th, 1879, at 10 a. m., in Book 1, Powers of Attorney, Pima Co., A. T., pages 186. S. W. Carpenter, county recorder, by W. A. McDermott, deputy. Filed Dec. 22d, 1879. John Wasson, U. S. sur. gen'l. 4 Journal, vol. 1, pgs. 258-260. Filed in the office of the clerk court of private land claims March 26, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

532 Ant thereafter, to wit, on the 29th day of April, A. D. 1895, the argument of the case was concluded and the matter submitted to the court for decision and was by the court taken under advisement.

And be it further remembered that thereafter, to wit, on June 17th, 1895, the court rendered its decision in the words and figures following, to wit :

UNITED STATES OF AMERICA, *ss.* :

In the Court of Private Land Claims, Arizona District, 1895.

WM. FAXON, JR., Trustee, *et al.*)

vs.

UNITED STATES.)

D. G. ASTIAZARAN *et al.*)

vs.

UNITED STATES.)

Nos. 8, 9, and 162, Consolidated.

GEORGE HILL HOWARD)

vs.

UNITED STATES.)

Decree.

The above-entitled causes having been consolidated by former order of this court under the style and name of Wm. Faxon, Jr., trustee, *et al. vs.* The United States, and the said causes so consolidated having been tried on the 25, 26, 27, 28, and 29 days of March, A. D. 1895, and the court having taken the same under advisement, and after duly considering all the evidence, and after full argument by counsel, as well as for the petitioners as for the United

533 States, and being fully advised in the premises, doth find that the petitions filed in the above-entitled actions so consolidated as aforesaid for a confirmation of the private land claim commonly known as the Calabasas, Tumacacori, and Guebabi grant or grants, situate in the Territory of Arizona, and neither of them has been sustained by sufficient proof, and that the title to said grant so claimed and asserted as having been originally granted by the Republic of Mexico, through Ignacio Lopez, the treasurer general of the department of Sonora, to one Francisco Alejandro

Aguilar, and bearing date the 19th day of April, 1844, is null and void and not such a title as the United States is bound to recognize and confirm.

It is therefore ordered, adjudged, and decreed that the claim to the property known as and included within what is called the Calabasas, Tumacacori, and Guebabi grant or private land claim, and being situate in the county of Pima, Territory of Arizona, under a grant alleged to have been derived from the Republic of Mexico, executed by Ignacio Lopez, treasurer general of the department of Sonora, in favor of Francisco Alejandro Aguilar, and dated the 19th day of April, 1844, be, and the same is hereby, rejected and said petitions are dismissed.

JOSEPH R. REED,
Chief Justice.

(Endorsed:) Case No. 8, consolidated. File No. 35. Wm. Faxon, Jr., trustee, *et als.*, plaintiff, *vs.* The United States, defendant. Decree. Filed in the office of the clerk court of private land claims June 17th, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy. Recorded on page 94 of journal 1.

534

Opinion of the Court.

In the Court of Private Land Claims, March Term, A. D. 1895,
Tucson, Arizona Territory.

WILLIAM FAXON, JR., Trustee, and Others, Petitioners, }
vs.
THE UNITED STATES, Defendant. }

Action for the confirmation of what is known as the Calabasas and Tumacacori land grant in the Territory of Arizona.

Francis J. Heney, Esquire; S. M. Franklin, Esquire, for the petitioners.

Matt. G. Reynolds, Esquire, U. S. attorney, for the defendant.

535 REED, C. J.:

1. Petitioners allege title in themselves derived from Don Francisco Alejandro Aguilar, to whom a title was issued on the 19th of April, 1844, by Ignacio Lopez, treasurer of the department of Sonora, showing a sale and grant of the lands by that officer. As the only question we find it necessary to consider is as to the power of the officer to make the sale and grant, we deem it proper to set out that portion of the expediente which recites the authority under which he assumed to act.

It is as follows:

"Ignacio Lopez, captain of cavalry retired to the infantry, honorary intendent of the army and treasurer of the department of Sonora.

Whereas the supreme decree of February 10th, 1842, provides for the sale, on account of the critical condition of the public treasury,

of the properties pertaining to the department of temporalities, of which classes are the farming lands for breeding cattle and horses respectively of the four leagues of the town site of the depopulated towns of Tumacacori and the two sitios of the stock farm of the same at the points of Guebavi, Potrero, Cerro de San Cayetano, and Calabasas, whose areas, boundaries, monuments, and coterminous tracts are stated in the corresponding proceedings of survey executed in the year 1807 of the commissioner surveyor, Don Manuel de Leon, veteran ensign and late commandant of the presidio of Tubac, according to the information obtained in relation thereto at the instance of this departmental treasury, said temporal farming and grazing lands being valued at the sum of five hundred dollars, as provided in article 2d of the aforesaid supreme decree of February 10th, 1842; and complying punctually therewith I have ordered the formation of the corresponding expediente by the court of the first instance and of the treasury of the district of San Ignacio, during which proclamations no bidder appeared; therefore, and in compliance with article 73 of the law of April 17th, 1837, as the sale in question on account of the national treasury does not exceed five hundred dollars, this said treasury proceeded to the public sale of the aforementioned lands of the depopulated Tumacacori and the lands of its stock farm, Calabasas, and other annexed points, all belonging to the department of temporalities, on the 16th, 17th, and 18th of the current month, in solicitation of bidders, without there being any other than Don Francisco Axandro Aguilar, a merchant and resident of this port and village of San Fernando de Guaymas, for said sum of five hundred dollars, the appraised value at which said temporalities have been sold, as appears from the third and last offer which literally is as follows."

It is apparent from this recital that the officer making the grant assumed (1) that the property in question belonged to the
 536 class denominated as pertaining to the department of temporalities, and (2) that the power to sell lands of that class was conferred by the decree of February 10th, 1842, and (3) that, as the price at which that in question was sold did not exceed \$500, the power to make the sale and grant was withheld from the board of sale by article 73 of the law of April 17th, 1837. For the present *the present* the correctness of the first two assumptions may be conceded.

The decree of February 10th, 1842, is as follows:

"Antonio Lopez de Santa Ana, etc.

Art. 1. The boards of sale in the several departments will proceed to sell at public auction to the highest bidder the properties (fincas) situated therein that pertain to the department of temporalities.

2. No bid will be admitted that does not cover the amount considered to be the value of the property (fincas), computed from the amount of the leases, which shall be considered as the interest thereof at the rate of five per cent.

3. The bids shall be made for cash, which shall be paid when the sale is approved, less the amount of the burden imposed on each

property (finca) in question, may intend to set up for improvement or under other pretext shall in any manner embarrass the proceedings of the board of sale in making the sales, but the right of parties in interest to apply to the supreme government or to the proper authorities shall remain intact."

Article 73 of the decree of April 17th, 1837, is as follows ;

"All the purchases and sales that are offered on account of the treasury and exceed five hundred dollars shall be made necessarily by the board of sales, which in the capital of each department shall be composed of the superior chief of the treasury, the departmental treasurer, the first alcalde, the attorney general of the treasury, and the auditor of the treasury, who shall act as secretary. Its minutes shall be spread on a book which shall be kept for the purpose and shall be signed by all the members of the board and a copy thereof shall be transmitted to the superior chief of the treasury for such purposes as be necessary and to enable him to make a report to the supreme government."

It was contended in argument that the effect of this provision was to limit the power of the board of sales in making sales of national property of all classes to cases in which the value of the property exceeded \$500, but if it should be conceded that the
537 provision imposes, generally, the limitation contended for that limitation does not, in our opinion, apply to the case of a sale of the class or character of property designated in the decree of February 10, 1842.

That decree, in terms, directed the sale by the board of sales of all properties "that pertained to the department of temporalities" and prescribed the manner in which the sales should be conducted and the terms upon which they should be made. It contains no words of limitation as to the power to sell conferred by it, nor is there any reference to the former decree, but is a general direction to the board of sales to sell all properties of the class designated. If, therefore, the property in question belong to that class, it is clear that the treasurer of the department did not have power to make the sale.

2. The lands in question formerly belonged to the town of Tuma-cacori, which was an Indian village of pueblo, but the place had been uninhabited for many years before the sale and grant in question was made. Lands pertaining to the department of temporalities are understood to be those formerly occupied by the monastic and other orders which were suppressed by the decree of the Cortes of October 1st, 1820. It was contended that the assumption by the officer making the sale that the property in question pertained to the department of temporalities was erroneous ; that upon the abandonment of the property by the Indians it became part of the public domain of the nation and could be disposed of by the officers having authority to sell lands belonging to the public domain. This contention may also be conceded, and the question is whether the departmental treasurer had authority and power under the laws of Mexico to make the sale in question.

538 By the law of January 26, 1831, a general department of revenue was created, to which was given all branches of the treasury except the administration of the mail and the mint. By the 22nd article of the law it was provided that it should not go into effect until those that regulate the general treasury and the commissaries should be promulgated.

On the 21st of May following a law was enacted creating commissariats and commissaries, and on July 7th of the same year a circular was issued which was entitled "Regulations under the law of January 26, 1831."

By the former it was provided that there should be commissariat general in certain demarkations, among which was the State of Sonora, and in which the land in question was situated. The 5th article of the law defined the powers and duties of the commissariats, among which was to collect and distribute the funds belonging to the federation under the orders of the treasury general.

By the circular of July 7th the general department of revenue, created by the law of January 26, was divided into three sections, under whose charge should be the different branches of the treasury; to the first section, the chief of which was the first auditor, was given jurisdiction of national property.

The 10th article provided that the general department should take an exact account of the number, location, value, condition, and present method of administration of all the property and estates of the nation, and should see to the thorough collection of the proceeds thereof.

By a decree of July 20, 1831, it was provided that all contracts, purchases, and sales on account of the treasury should be made by boards of sale consisting of the commissaries general and 539 certain other designated officers. The decree also contained explicit rules, prescribing the manner in which such sales should be conducted and the record thereof made.

In 1835 the State governments were abolished or suspended, and the country was divided into departments, of which Sonora was one. Under a decree promulgated April 17, 1837 (the 73 article of which has been set out above), the principal officer of the general treasury in each department was designated as the superior chief of the treasury, and on him was conferred the powers and duties formerly exercised by the commissary general. The decree also created the departmental treasuries at the capital of each department and defined the duties of the departmental treasurers. It also provided that those officers should depend immediately upon the superior chiefs of the treasury.

From these various provisions it is manifest that the power to make sales or grants of national lands situated in the States and departments was vested in the treasury department of the nation. But it is equally clear that the exercise of that power was governed by strict rules and regulations emanating either from the department or the chief executive of the nation; and we look in vain for any rule or regulation which by any possible construction conferred that power upon the officer who in this case attempted to exercise

it. It was not conferred by any express provision, nor is it to be inferred from any power that was conferred.

On the boards of sale created under the decree of July 20, 1831, and that of April 17, 1837, alone was this power conferred, and the strict rules and regulations enacted for the government of those boards in the conduct of such sale precludes the idea that
540 any single officer, although a member of the board, could exercise the power.

We reach the conclusion, therefore, the sale in question was void for want of power on the part of the officer attempting to make it, and a judgment will accordingly be entered rejecting the claim alleged by plaintiffs and dismissing their petition.

(Endorsed :) No. 8 (consolidated). Wm. Faxon, Jr., trustee, *et als. vs. U. S. et als.* Opinion. Filed in the office of the clerk court of private land claims June 17, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

541

Opinion.

WM. FAXON, JR., *et als.*, Petitioners, }
vs.
THE UNITED STATES, Defendant. }

Opinion of Mr. Justice Murray.

The grant in this case should be rejected for the reasons stated in the opinion of the court, and for the additional reason that there is no *toma de razon* of the grant in the proper book, as required by the 6th article of the treaty of 1853, which is as follows:

"No grant of land within the territory ceded by the first article of this treaty bearing date subsequent to the day, 25th of December, when the minister and subscriber to this treaty on the part of the United States proposed to the government of Mexico to terminate the question of boundary will be considered valid or recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico."

Page 696, *Treaties and Conventions between the U. S. & Other Powers, 1876-1867.*

Grants in Mexico are recorded in a book kept for that purpose, but are not copied in full, as is the practice in the United States. There is no other record of grants. A grant when issued is attached to a copy of the original expediente or matrix, and this constitutes what is called the *titulo*, and is delivered to the grantee. Before delivering the *titulo* it is the duty of the officer issuing it to have a *toma de razon* of the grant made in the proper book kept for that purpose. Article 9 of the regulations of November 21st, 1828, provided that "records should be kept in a book destined for that purpose of all petitions presented and grants made" * * *
542 (Rockwell, p. 454). Article 31 of the regulations of 1846 required in express terms that *toma de razon* should be made

in the city of Mexico of all grants issued by the board of sale, and this board of sale was authorized to sell all the public lands in the States and Territories of the Republic. (Flipper, p. 156.)

It is provided in all grants issued by the officials of Mexico that I have examined that the grant shall be recorded in the proper book. The same system of recording grants was practiced by the Spanish government prior to the independence of Mexico.

The following is the *toma de razon* of the grant to the parties therein named (as appears in the proper book in the archives in the State of Sonora):

"On the second of February, 1840, title was issued in favor of Don Tomas and Don Ignacio Ortiz and other citizens of the *precidio* of Tubac of four sitios for raising cattle and horses, which composed the place called San Ygnacio de la Conoa, in the jurisdiction of the *precidio* of Tubac.

TERAN. [RUBRICA.]"

In the case of *The United States vs. Osio*, 23 How., page 297, the court said: "Adjudications of land titles were required by the Mexico law to be recorded. That requirement, however, was regarded as fulfilled, according to the practice in the department of California, when a short entry was made in a book kept for that purpose specifying the number of the expediente, the date of the grant, a brief description of the land granted, and the name of the person to whom the grant was issued."

There being no other system of recording grants in the Republic of Mexico at the date of the treaty, the words "duly recorded in the archives of Mexico" should be construed to mean *toma de razon* of grants in the proper book in the archives of Mexico.

543 The treaty of Guadalupe Hidalgo does not in terms require grants to be recorded to entitle them to recognition by the United States; yet the Supreme Court of the United States, in adjudicating the rights of grant claimants in California under the act of March 3rd, 1851, held in a number of cases that grants were not entitled to confirmation unless they had been recorded in the proper book in the archives of Mexico. *Vide U. S. vs. Teschmaker*, 22 How., 59; *U. S. vs. Osio*, 23 How., 279, '80; *U. S. vs. Castro et al.*, 24 How., 350; *U. S. vs. Cambuston*, 20 How., 59; *U. S. vs. Vallejo*, 1 Black, 554, '5, and *U. S. vs. Knight's Administrator*, 1 Black, 251, '2.

In the case of *U. S. vs. Knight's Administrator*, *supra*, the court said: "There is no record evidence that the grant was ever issued, and without such evidence the claim cannot be confirmed."

Evidence was also introduced by claimant tending to prove that a book of records appertaining to land titles in California for the year 1846 was lost, but no attempt was made to show that the grant in question was ever recorded in that book.

In this case it appears that the proper book of records was on file in the archives at the time the grant in question was made, and it is not recorded.

WILLIAM W. MURRAY,
Associate Justice.

I am authorized to say that Mr. Justice Fuller concurs in this opinion, but not in the opinion of the court.

(Endorsed :) Wm. Faxon, Jr., trustee, *et als. vs. U. S. et als.* Opinion of Justices Murray and Fuller. Filed June 27, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

544

Petition for and Allowance of Appeal.

In the United States Court of Private Land Claims.

UNITED STATES OF AMERICA, }
Territory of Arizona, } ss :

WILLIAM FAXON, JUNIOR, Trustee, of Boston, in the State of Massachusetts, and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, Administrator, with Will Annexed, of the Estate of Thomas Nickerson, Deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, All of Boston, State of Massachusetts, and J. W. Burgess, of Brookline; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, All in the State of Massachusetts, and William H. Orcutt, of Buffalo; J. H. Small, of Brooklyn, in the State of New York, and Thomas Sampson, of Waterville, in the State of Maine, and Lottie M. Sackett, of Warren, in the State of Ohio, *Cestuis que Trust.*,

vs.

THE UNITED STATES OF AMERICA and GEORGE W. ATKINSON, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, Deceased; James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, Unknown Heirs of Henry Guinn, Deceased; R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville,

Samuel G. Lewis, Thomas Lewis, Juan M. Montañó, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagau, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, Administrator of the Estate of George W. Reagan, Deceased; Juan Saldate, John Doe Saldate, Ramon Sardina, The Santa Cruz Valley Water Storage Company, a Corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanferd, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a Corporation; Salero Land and Cattle Company, a Corporation; Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, The New Mexico and Arizona Railroad Company, a Corporation; Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathaniel Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (Whose True Names are to Plaintiffs Unknown).

545 To the honorable the Supreme Court of the United States:

The appeal of William Faxon, Junior, trustee, of Boston, in the State of Massachusetts, and of J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, administrator, with will annexed, of the estate of Thomas Nickerson, deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, all of Boston, State of Massachusetts, and of J. W. Burgess, of Brookline; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, all in the State of Massachusetts, and of William H. Orcutt, of Buffalo, and J. H. Small, of Brooklyn, in the State of New York, and of Thomas Sampson, of Waterville, in the State of Maine, and of Lottie M. Sackett, of Warren, in the State of Ohio, *cestuis que trust*.

The above-named petitioners and appellants respectively showeth—

That on the 2nd day of March, A. D. 1893, the above-named pe-

tioners filed their bill in the United States court of private land claims against the above-named defendants and appellees, wherein said petitioners sought to have said court confirm their title from the Mexican government to that certain piece of land situate
 546 in the county of Pima, Territory of Arizona, and known as the Calabasas, Tumacacori, and Huebabi grant or grants, being a private land claim, which is the property of said petitioners and appellants hereinbefore named. Thereafter said defendants and appellees filed their pleas and answers, and thereafter and on the 25th, 26th, 27th, 28th, and 29th days of March, A. D. 1895, the said cause came on for trial before said court, and the same was tried by said court. During said trial defendants offered evidence, to which petitioners duly objected; and the objections being overruled, petitioners duly excepted, and the bill of exceptions thereof, duly signed, are of record in this cause.

That thereafter and on the 17th day of June, A. D. 1895, the court rendered its judgment and decree in said action, rejecting the claim of said petitioners to said land grant or grants and declaring their title from the Mexican government to the same to be null and void and not to be such a title as the United States is bound to recognize and confirm, and dismissing said petitioners' bill.

Wherefore these appellants appeal from the whole of said judgment and decree of the said United States court of private land claims and respectfully pray that the judgment and decree of said court and the petition, demurrer, pleadings, statement of facts, opinions, record, and proceedings in this action may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court may proceed to hear said cause anew, and that said decree and judgment of the United States court of private land claims may be reversed and a decree made adjudging that petitioners and appellants have a good and valid title from the
 547 Mexican government, which the United States is bound to recognize and confirm, to the land described in petitioners' petition, and that said petitioners and appellants have a perfect title to and are the owners in fee of said land, and that the extent, location, and boundaries of said land are as set forth, defined, and described in petitioners' petition and as shown on the map which accompanies and is a part of said petition, and adjudging that said defendants and neither of them have any estate, right, or interest whatsoever therein, and that said defendants and all of them be forever enjoined from asserting any claim or interest thereto adverse to these petitioners or any or either of them.

JOHN C. COOMBS,

Of Boston, Mass.

FRANCIS J. HENNEY,

Attorneys for Petitioners and Appellants.

The appeal of William Faxon, Jr., trustee, and his *cestuis que trust*, from the judgment and decree of the United States court of private land claims in the above-entitled cause is hereby granted and allowed to the Supreme Court of the United States this 27th

day of November, A. D. 1895, on motion of John C. Coombs, of Boston, Massachusetts, and Francis J. Heney, attorneys for said appellants.

HENRY C. SLUSS,

Associate Justice of the Court of Private Land Claims.

(Endorsed :) Wm. Faxon, Jr., trustee, *et als. vs. U. S. et als.* Petition & allowance of appeal. Filed Dec. 9, 1895. James H. Reeder, clerk, by R. L. Long, dep.

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Citation.

In the Supreme Court of the United States.

UNITED STATES OF AMERICA, }
Territory of Arizona, } ss :

WILLIAM FAXON, JUNIOR, Trustee, of Boston, in the State of Massachusetts, and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, Administrator, with Will Annexed, of the Estate of Thomas Nickerson, Deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, All of Boston, State of Massachusetts, and J. W. Burgess, of Brookline; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, All in the State of Massachusetts, and William H. Orcutt, of Buffalo; J. H. Small, of Brooklyn, in the State of New York, and Thomas Sampson, of Waterville, in the State of Maine, and Lottie M. Sackett, of Warren, in the State of Ohio, *Cestuis que Trust,*

vs.

THE UNITED STATES OF AMERICA and GEORGE W. ATKINSON, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, Deceased; James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, Unknown Heirs of Henry Guinn, Deceased; R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline

Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville, Samuel G. Lewis, Thomas Lewis, Juan M. Montaño, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, Administrator of the Estate of George W. Reagan, Deceased; Juan Saldate, John Doe Saldate, Ramon Sardina, The Santa Cruz Valley Water Storage Company, a Corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanford, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a Corporation; Salero Land and Cattle Company, a Corporation; Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, The New Mexico and Arizona Railroad Company, a Corporation; Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathan Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (Whose True Names are to Plaintiffs Unknown).

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Citation.

The Hon. H. C. Sluss, associate justice of the United States court of private land claims, to the United States of America and George W. Atkinson, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, Deceased; James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, Unknown Heirs of Henry Guinn, Deceased; R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville, Samuel G. Lewis, Thomas Lewis, Juan M. Montano, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ra-

mirez, Eugene K. Sykes, administrator of the estate of George W. Reagan, deceased; Juan Saldate, John Doe Saldate, Ramon Sardina, The Santa Cruz Valley Water Storage Company, a corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes. Don A. Sanford, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a corporation; Salero Land and Cattle Company, a corporation; Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, The New Mexico and Arizona Railroad Company, a corporation; Morgan R. Wise, Joseph F. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathan Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (whose true names are to petitioners unknown):

Whereas William Faxon, Junior, trustee, of Boston, in the State of Massachusetts, and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, administrator, with will annexed, of the estate of Thomas Nickerson, deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, all of Boston, State of Massachusetts, and J. W. Burgess, of Brookline; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, all in the State of Massachusetts, and William H. Orcutt, of Buffalo, and J. H. Small, of Brooklyn, in the State of New York, and Thomas Sampson, of Waterville, in the State of Maine, and L-ttie M. Sackett, of Warren, in the State of Ohio, *cestuis que trust.*, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the United States court of private land claims, rejecting their claim of title from the Mexican government to the land known as the Calabasas, Tuma-cacori, and Huebabi land grant or grants, and dismissing their petition in the above-entitled cause; and whereas said petitioners and appellants have filed the security required by law:

You are, therefore, hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the second Monday in October next, 1896, to do and receive what may pertain to justice to be done in the premises.

Given under my hand, at the city of Santa Fé, in the Territory

of New Mexico, the 27th day of November, in the year of our Lord one thousand eight hundred and ninety-five.

HENRY C. SLUSS,
*Associate Justice of the United States
Court of Private Land Claims.*

Service of the foregoing citation is hereby acknowledged this 7 day of Dec., 1895.

Attorney for United States.
W. H. BARNES,
Attorneys for the Other Defendants.

(Endorsed :) Wm. Faxon, Jr., trustee, *et als. vs. U. S. et als.* No. 8. Citation. Filed Dec. 9, 1895. James H. Reeder, clerk, by R. L. Long, dep.

552 U. S. Court of Private Land Claims.

WILLIAM FAXON, JR., Trustee, etc., *et al.*
vs.

THE UNITED STATES OF AMERICA and GEORGE W. ATKINSON *et al.* }

I hereby waive service of citation in the above-entitled cause.

MATT. G. REYNOLDS,
U. S. Attorney, Court of Private Land Claims.

(Endorsed :) No. 8. Wm. Faxon, Jr., trustee, *et als. vs. U. S. et als.* Waiver of service of citation of U. S. attorney. Filed in the office of the clerk court of private land claims Dec. 14, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

553 (*Bond on Appeal.*)

UNITED STATES OF AMERICA, }
Territory of Arizona, } ss :

In the United States Court of Private Land Claims.

WILLIAM FAXON, JUNIOR, Trustee, of Boston, in the State of Massachusetts, and J. W. Bailey, Hiram Barker, Clarence W. Barron, A. D. S. Bell, Mrs. Ida F. Estabrook, John Faquhar Sons, George S. Harwood, Henry S. Jenkins, Charles B. Lancaster, A. B. Lawrie, Edward H. Mason, Pliny Nickerson, Francis J. Heney, Administrator, with Will Annexed, of the Estate of Thomas Nickerson, Deceased; Edward W. Noyes, Charles W. Pierce, Albert A. Pope, Lucius G. Pratt, William E. Putnam, S. W. Reynolds, Warren Sawyer, William B. Sewall, S. S. Sleeper, J. Frank Strand, A. F. Whitcomb, George B. Wilbur, William Bassett, All of Boston, State of Massachusetts, and J. W. Burgess, of Brookline; Mrs. Eliza J. Clum and J. Sumner Webb, of Milton; Mrs. Abbe W. Coes, of Worcester; Ella J. Cutting, of

Newton; Daniel Hedge, of East Dennis; Alvin Houghton, of West Newton; Thomas H. Knowles, of New Bedford; Joseph K. Manning, of Medford; W. R. Pearmain, of Chelsea; R. M. and T. Leynolds, of Monson; Henry A. Seaverns, of Scituate, All in the State of Massachusetts, and William H. Orcutt, of Buffalo; J. H. Small, of Brooklyn, in the State of New York, and Thomas Sampson, of Waterville, in the State of Maine, and Lottie M. Sackett, of Warren, in the State of Ohio, *Cestuis que Trust*,

vs.

THE UNITED STATES OF AMERICA and GEORGE W. ATKINSON, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Poe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguavo, Jesus Arviso, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, Deceased; James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carrauzza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fierras, W. H. Good, Unknown Heirs of Henry Guinn, Deceased; R. H. James Good, W. Goodinan, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnville, Samuel G. Lewis, Thomas Lewis, Juan M. Montañó, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, Administrator of the Estate of George W. Reagan, Deceased; Juan Saldate, John Doe Saldate, Ramon Sardina, The Santa Cruz Valley Water Storage Company, a Corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanford, L. J. Sanford, Sonoita and Santa Cruz Land and Water Company, a Corporation; Salero Land and Cattle Company, a Corporation, Tomas Tapia, F. M. Vernon, Mariano Valdez, Zenobia Villa and Sons, The New Mexico and Arizona Railroad Company, a Corporation; Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernard Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathau Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (Whose True Names are to Plaintiffs Unknown).

554 Know all men by these presents that we, William Faxon, Junior, trustee, as principal, and H. B. Tenney and Ben. Heney, of Pima county, Territory of Arizona, as sureties, are held

and firmly bound unto the United States of America and George W. Atkinson, Francisco Q. Acebedo, Francisco S. Acebedo, Gerardo Acebedo, John Doe Arenas, Fidel Aguayo, Lorenzo Aguayo, Leon Aguayo, Jesus Arvizo, Charles Altschul, Claudio Acebedo, Inez Andrade, Demetrio Barrios, Charles Beck, J. F. Black, Unknown Heirs of William Bennett, James Breen, George Beckwith, Frederick Beckwith, Beckwith Brothers, Fernando Carranza, Pedro Cordova, Thomas D. Casanega, Tomas Cota, Francisco Castillo, W. C. Davis, Edwin Egan, Mateo Estrada, Benito Estrada, Bartolo Figueroa, John W. Fuqua, Fierras Brothers, Timoteo Fierras, Antonio Fier-ras, W. H. Good, Unknown Heirs of Henry Guinn, deceased; R. H. James Good, W. Goodman, Charles Gullman, W. J. Glenn, John Doe Henderson, Samuel Hughes, Pauline Jones, R. E. Key, William E. Key, Joseph King, Henry W. Low, Domingo Laguna, John A. Lucas, William Thomas Linnfille, Samuel G. Lewis, Thomas Lewis, Juan M. Montano, William Morgan, Theodore Martinez, T. Lillie Mercer, S. B. McCorkle, Unknown Heirs of S. B. McCorkle, G. R. McCorkle, Francisco *Francisco* Moreno, D. B. McCullough, Joseph Piskorski, James Peters, Antonio Proto, Louis Proto, Proto Brothers, Benjamin H. Page, Zada Fay Reagan, Bernardo Romero, Manuel Ronquillo, Timoteo Ramirez, Eugene K. Sykes, administrator of the estate of George W. Reagan, deceased; Juan Saldate, John Doe Saldate, Rama Sardina, The Santa Cruz Valley Water Storage Company, a corporation; Ramon Saavedra, Saavedra Brothers, Eugene K. Sykes, C. P. Sykes, Don A. Sanford, L. J. Sanford, Sonoyta and Santa Cruz Land and Water Company, a corporation; Salero Land and Cattle Company, a corporation; Tomas Tapia, F. M. Vernon, Mariano Valdez, Senobia Villa & Sons, The New Mexico & Arizona Railroad Company, a corporation; Morgan R. Wise, Joseph E. Wise, Solomon B. Wise, William H. Walker, Jose Maria Valdez, Rafael N. Vasquez, Harvey S. Walker, Andrew Roe, Alexander Roe, Abraham Roe, Benjamin Roe, Bernar Roe, Charles Roe, David Roe, Daniel Roe, Edwin Roe, Eugene Roe, Edward Roe, Fred. Roe, Frank Roe, George Roe, Henry Roe, Howard Roe, Isaac Roe, Lemuel Roe, James Roe, John Roe, Jacob Roe, Nathan Roe, Philip Roe, Robert Roe, Richard Roe, Samuel Roe, Thomas Roe, and William Roe (whose true names are to plaintiff- unknown), in the sum of one thousand dollars, lawful money of the United States; — which sum, well and truly to be paid, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of November, A. D. 1895.

Now, the condition of the above obligation is such that whereas the above-bounden William Faxon, Jr., as trustee, the principal mentioned herein, has taken an appeal to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled action by the United States court of private land claims:

Now, therefore, if the above-named William Faxon, Jr., trustee, shall prosecute his said appeal to effect and answer all costs if he

shall fail to make good his plea, then this obligation shall be void ;
otherwise to be and remain in full force and firtue.

555

COLIN CAMERON, [SEAL.]
For Wm. Faxon, Jr., Trustee.
H. B. TENNEY. [SEAL.]
BEN. HENEY. [SEAL.]

Signed, sealed, and delivered in presence of—

Witness:

JOHN A. BLACK.

TERRITORY OF ARIZONA, } ss :
County of Pima,

H. B. Tenney, being duly sworn, says that he is one of the persons named in and who executed the foregoing obligation ; that he is a resident and freeholder of said county of Pima, Territory of Arizona, and that he is worth at least the sum of two thousand dollars over and above all his just debts and liabilities and over and above the exemptions allowed by law.

H. B. TENNEY.

Subscribed and sworn to before me this 18th day of November, A. D. 1895, at Tucson, Pima county, Arizona Territory.

[SEAL.]

WM. T. GIBBON,
Notary Public, Pima County, Arizona.

TERRITORY OF ARIZONA, } ss :
County of Pima,

Ben. Heney, being duly sworn, says that he is one of the persons named in and who executed the foregoing obligation ; that he is a resident and freeholder of said county of Pima, Territory of Arizona, and that he is worth at least the sum of two thousand dollars over and above all his just debts and liabilities and over and above the exemptions allowed by law.

BEN. HENEY.

Subscribed and sworn to before me, at Tucson, county of Pima, Territory of Arizona, this 18th day of November, A. D. 1895.

WM. T. GIBBON,
Notary Public, Pima County, Arizona.

The foregoing bond is hereby approved this 27th day of November, A. D. 1895.

HENRY C. SHISS,
Associate Justice Court of Private Land Claims.

556 (Endorsed:) Case No. 8 (consolidated). United States court of private land claims, district of Arizona. William Faxon, Jr., trustee, *et al.*, plaintiffs, *vs.* The United States of America and George W. Atkinson *et al.*, defendants. Bond. Filed in the office of the clerk court of private land claims December 9, 1895. Jas. H. Reeder, clerk, by R. L. Long, deputy.

557

In the Court of Private Land Claims.

DOLORES G. ASTIAZARAN, LOUISA G. DE BUSTAMENTE,
 Jesus A. de Ocegüera, Francisco Ocegüera, Carmen
 O. de Espriu, Augustins O. de Robinson, Francisco
 Gandara, Migel Gandara, Jose Maria Gandara, Car-
 men Gangara, Ana Gandara, Trinidad Aguilar,
 Fernando Aguilar, Anita Aguilar, Jesus Aguilar,
 Carmen Aguilar, and Santiago Ainsa, Administrator,
 with Will Annexed, of Frank Ely, Deceased, Plain-
 tiffs and Appellants,

vs.

THE UNITED STATES OF AMERICA, Defendant and
 Appellee.

Case No. 9.

Tumacacori and Calabasas grant.

The above-named plaintiffs, Dolores G. Astiazaran, Louisa G. de Bustamente, Jesus A. de Ocegüera, Francisco Ocegüera, Carmen O. de Espriu, Augustina O. de Robinson, Francisco Gandara, Miguel Candara, Jose Maria Gandara, Carmen Gandara, Ana Gandara, Trinidad Aguilar, Fernando Aguilar, Anita Aguilar, Jesus Aguilar, Carmen Aguilar, and Santiago Ainsa, administrator, with will annexed, of Frank Ely, deceased, conceiving themselves aggrieved by the order and judgment entered on June 17, 1895, in the above-entitled cause, do hereby appeal from said order and judgment to the Supreme Court of the United States, and they pray that this their appeal may be allowed, returnable sixty days from the date thereof, and that a transcript of the record and proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the Supreme Court of the United States.

SELIM M. FRANKLIN,
Attorney for Plaintiffs and Appellants.

Tucson, Arizona Territory, November 29th, 1895.

And now, to wit, on December 6th, 1895, it is ordered that the appeal be allowed as prayed for.

HENRY C. SLÜSS,
Associate Justice Court of Private Land Claims.

(Endorsed :) D. G. Astiazaran *et als.* vs. U. S. *et als.* No. 9. Allowance of appeal. Filed Jan. 7, 1896. James H. Reeder, clerk, by R. L. Long, dep.

558

In the Court of Private Land Claims.

DOLORES G. ASTIAZARAN, LOUISA G. DE BUSTAMENTE,
 Jesus A. de Ocegüera, Francisco Ocegüera, Carmen
 O. de Espriu, Augustina O. de Robinson, Francisco
 Gandara, Miguel Gandara, Jose Maria Gandara,
 Carmen Gangara, Ana Gandara, Trinidad Aguilar,
 Fernando Aguilar, Anita Aguilar, Jesus Aguilar,
 Carmen Aguilar, and Santiago Ainsa, Administrator,
 with Will Annexed, of Frank Ely, Deceased, Plain-
 tiffs and Appellants,

Case No. 9.

vs.

THE UNITED STATES OF AMERICA, Defendant and
 Appellee.

Tumacacori and Calabasas grant.

UNITED STATES OF AMERICA, ss :

To the United States of America, Greeting :

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the court of private land claims, district of Arizona, wherein the above-named plaintiffs and appellants are appellants and The United States of America are appellee and respondent, to show cause, if any there be, why the judgment rendered against the said appellants in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 6th day of December, A. D. 1895.

HENRY C. SLUSS,

Associate Justice of the Court of Private Land Claims.

Due and legal service of the foregoing citation is hereby acknowledged this 12th day of December, A. D. 1895.

MATT. G. REYNOLDS,

United States Attorney, Court of Private Land Claims.

(Endorsed :) Dolores G. Astiazaran *et als.* vs. U. S. *et als.* Citation on appeal. Filed January 9, 1896. James H. Reeder, clerk, by R. L. Long, dep.

559

Certificate of Clerk.

UNITED STATES OF AMERICA, {
Territory of Arizona. }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing is a full, true, and correct transcript of all the papers filed and the proceedings had in said court in the



case entitled William Faxon, Jr., trustee, *et als.* against The United States *et als.*, No 8 (consolidated), except a certain map marked Exhibit —, which has been withdrawn from the files.

Given under my hand and the seal of said court, at Tucson, Arizona Territory, this 25th day of January, A. D. 1896.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

560 UNITED STATES OF AMERICA, } ss:
Territory of Arizona,

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the annexed map is a true copy of an exhibit introduced in evidence by the plaintiff on the trial in said court on the 27th day of March, 1895, of the case entitled William Faxon, Jr., trustee, *et al.* vs. The United States *et als.*, No. 8 (consolidated), and is a the exhibit stated by me in my certificate to the transcript of said cause as having been withdrawn. It is a part of the record of said case.

Witness my hand and the seal of said court this 30th day of January, 1896.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, *Clerk*,
By R. L. LONG, *Deputy*.

(Here follows map marked p. 560a.)

Endorsed on cover: Case No. 16,173. Court of private land claims. Term No., 883. William Faxon, Jr., trustee, *et al.*, appellants, vs. The United States and George W. Atkinson *et al.* Filed February 3rd, 1896.



No. 119

FRANCIS J. HENEY

Brief of Henry for Appellants.

Filed Nov. 16, 1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 119.

WILLIAM FAXON, JR., TRUSTEE ET AL.,
APPELLANTS,

vs.

THE UNITED STATES AND GEORGE W.
ATKINSON ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Statement and Brief for Appellants.

FRANCIS J. HENEY,

Attorney for Appellant William Faxon, Jr., Trustee.

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POINT I.

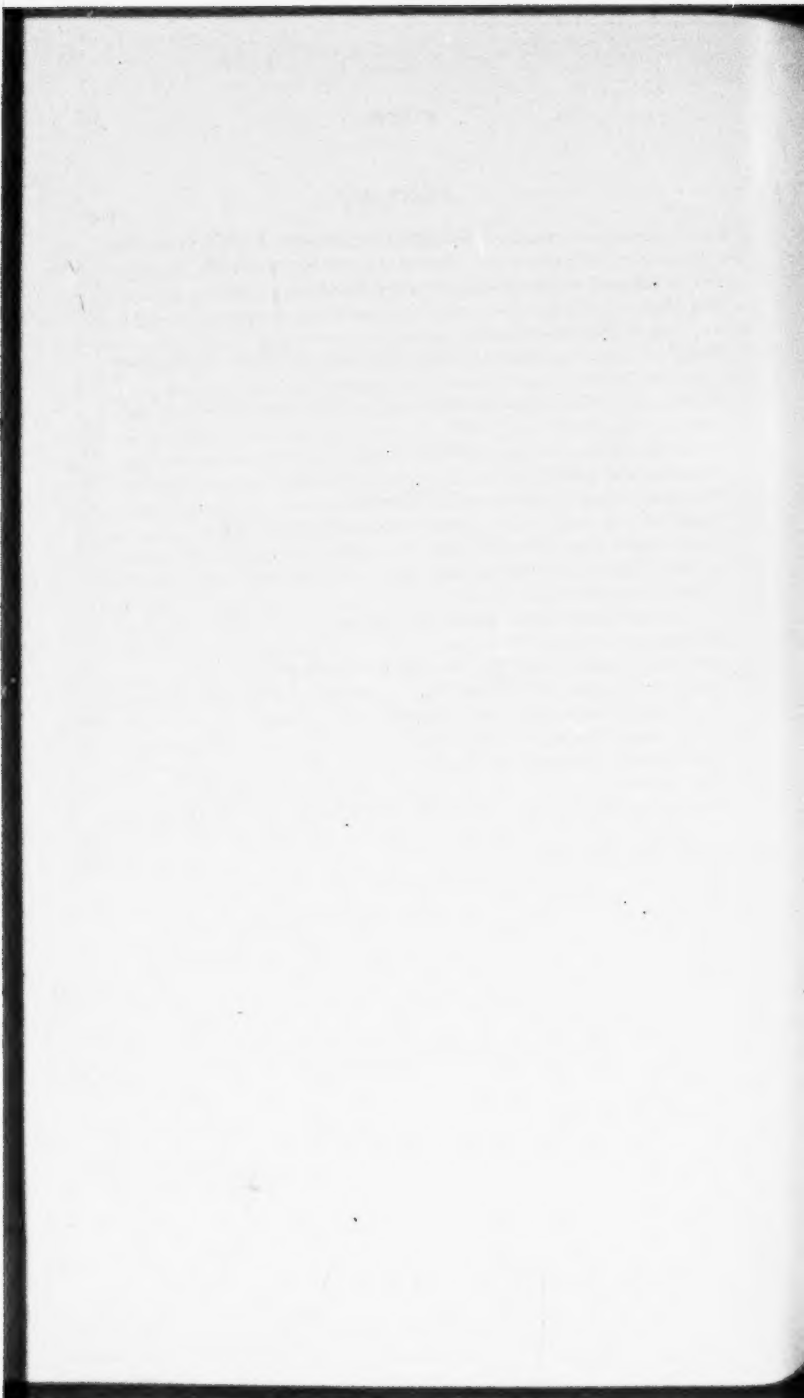
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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 119.

WILLIAM FAXON, JR., TRUSTEE, ET AL.,
APPELLANTS,

vs.

THE UNITED STATES AND GEORGE W.
ATKINSON ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT OF THE CASE.

This case was instituted in the Court of Private Land Claims by the filing on the part of William Faxon, Jr., trustee, etc., under the act of March 3, 1891, creating that court, of the petition set out on pages 1 to 7 of the Transcript of Record.

The land claimed by the petitioner is a certain tract commonly known as Tumacacori and Calabasas grant, a private land claim lying and situated in the county of Pima, Territory of Arizona.

The grant is sometimes referred to as the Tumacacori, Calabasas, and Guevavi grant, and the name of Guevavi is frequently spelled Huebabi and also Guebabi (*idem sonens*).

Tumacacori, Calabasas, and Guevavi were each separate and distinct missions originally, and were all founded about the middle of the 18th century by the Order of Jesuits, who continued to administer them until some time after the independence of Mexico, in 1821, and who seemed to have been succeeded in their administration of the same by the Order of Franciscans generally, and in some instances by secular clergymen appointed by the Supreme Church authorities.

Both the missions of Calabasas and that of Guevavi seem for a time at least to have been dependencies on the parent mission of Tumacacori, and all three of these missions, we are told in Bancroft's History of Mexico, had great difficulty in maintaining themselves against the attacks of the savage Apache Indians from the very dates of their foundations. In the month of December, 1806, the missions of Calabasas and Guevavi seemed to have both been abandoned, and the native Indians of Tumacacori petitioned Don Alejo Garcia Conde, political and military Governor, intendente of the Royal Treasury and Judge Privativo of the lands of the Province of Sonora, etc., for a new title to their lands in accordance with the royal instructions, on the 15th day of October, 1754, and of Article 81 of Royal Ordinances and Instructions in relation to the intendentes of the 4th of December, 1786, alleging the loss or destruction of their old title papers, but asserting the ownership of the lands then occupied by them as well as the ownership of the mission of Guevavi.

While this petition of said natives was pending, the governor of said Indians filed an additional petition, which was added to that of said natives and incorporated with their petition as a part thereof, asserting that said natives of the mission of Tumacacori owned other smaller tracts of land

which they had acquired by purchase with the money of the common fund of the mission and natives, and that the lands belonging to said mission of Tumacacori in the direction of Guevavi are bounded by the Rancho of Romero, the monuments of which still exist by the Yerba Buena, at which place also exists a corral in which rodeos were held by our mission, and on the potrero side the measurements reaching to the end of the marsh (cienega).

Under this petition and amended petition the grant was duly executed by said intendente of the community of Indians at Tumacacori, situated in the district of Pimerea Alta, in the jurisdiction of the military post of Tubac, for all of the lands set forth in said original petition, as well as for all the lands set forth in amended petition, according to the survey of said lands which was made by reason of said petitions, and also according to the boundaries of said lands as set forth and described in the testimony of the occupants and owners of adjacent grants, who appeared as witnesses and testified prior to said survey as to the correct location of three of the monuments of said grant.

The title papers recited that the lands are all located in one body, and nine points are particularly described as sites or places for monuments in such title papers.

These points are all specifically described and fixed by well-known and unmistakable natural landmarks.

The mission of Tumacacori was entitled to 4 sitios of land as a fundo legal or farm and to 2 sitios as an estancia or ranch for stock-raising purposes. The mission of Calabasas was entitled to a similar amount of land, and likewise the mission of Guevavi.

The combined quantity of land to which these three missions were entitled was 18 sitios, or a total of a little more than 78,000 acres, and the community of Indians and the mission of Tumacacori were granted all of the lands of their own mission and of the missions of Calabasas and

Guevavi, as well as certain additional lands which they claim to have purchased and to own.

This grant as surveyed contains a little less than 17 sitios, or a total of 73,246.7 acres, as claimed by us.

The intendente who made this grant was instructed by Article 2 of said law of October 15, 1754, to maintain the Indians in their possessions and to give them more land, as the exigencies of the population require, and said officer was instructed to act with verbal and not judicial process in questions of lands held by Indians, and particularly where their farms, farming, and stock-raising are in question. No limitation is placed upon the power of the officer as to the quantity of the land which he may grant to the Indians, but he is required to use his discretion and grant them as much land for farming and stock-raising as they may require, and is further instructed to act leniently with them.

On February 10, 1842, an order and command was issued by Santa Anna, as President or Dictator of Mexico, requiring the sale of "temporalities" throughout the Republic.

On April 19, 1844, the Treasurer General of the Department of Sonora, in compliance with this command of Santa Anna, and in accordance with Article 73 of the law of April 17, 1837, duly made, executed, and delivered a titulo or patent for all the lands described and included in said grant of 1807 to Francisco Alejandro Aguilar for the sum of five hundred dollars, said Aguilar having been the highest and best bidder at the public auction sale of said lands, which had been completed in accordance with law by said Treasurer General, at the town of Guaymas, in the Department of Sonora, on the 18th day of April, 1844, and said Aguilar having paid the amount of his bid, said sum of five hundred dollars, and the other necessary fees into the Departmental Treasury.

The money for this purchase by said Aguilar was all furnished by his brother-in-law, Manuel Maria Gandara, and said Aguilar took the title as trustee for said Gandara. This fact is admitted by the Government.

In the year 1848 the grant was resurveyed by Mexican officials, and in the year 1851 said Manuel Maria Gandara took possession of the lands and placed from 30 to 50 settlers upon the same, as well as about 6,000 head of sheep and a limited number of cattle and horses. These settlers cultivated the lands and engaged in the manufacture of serapes out of the wool from said sheep, all under the direction and control of and at the expense of said Gandara.

In the early part of the year 1852 said Gandara was occupying the best grazing and farming lands in each and every part of this grant and had extensive and substantial houses upon the same at Calabasas, which had cost several thousands of dollars, as well as having good and substantial corals and other improvements on different parts of the grant.

Said Gandara was thus maintaining possession and had as many as fifty people in his employ who were herding said sheep and cultivating said lands at the time the American boundary surveyors and the Southern Pacific railroad surveyors reached that section of the country, about the month of April, 1854.

This possession was continued by Gandara until late in the year 1856, by which time all of his employés had either been killed or driven off the ranch by the Apache Indians, owing to the withdrawal of Mexican troops from the adjoining post of Tubac.

Gandara again resumed possession of the grant in the year 1861, and one of his sons was killed upon the land by the Apache Indians in the year 1862. Gandara filed a petition for the confirmation of his title with the surveyor general of Arizona on June 9, 1864, and at that time he filed with said surveyor general the original titulo or patent of 1807, and the original titulo or patent of 1844, which are now on file with the clerk of this court as evidence of his title.

Said Francisco Alejandro Aguilar conveyed these lands to said Manuel Maria Gandara on March 31, 1856, and he

again conveyed them by a more formal deed of conveyance to said Gandara on March 2, 1869. This latter conveyance recites the fact that no consideration passed between them for the land at that time, and the value of the land is recited in that instance as being the sum of \$499.

Said Gandara deeded said lands to an American citizen, C. P. Sykes, July 24, 1877, for the sum of twelve thousand dollars. Said Sykes immediately took possession of the land, and in 1879 he filed a new petition for the confirmation of the grant with the surveyor general of Arizona; and after said surveyor general had caused an examination of the archives of Mexico to be made by a special agent named R. C. Hopkins, and had caused a survey of these lands to be made in accordance with the calls of the title paper of 1807, by a United States deputy surveyor named Harris, said surveyor general of Arizona made a report to the Commissioner of the General Land Office declaring that this grant is undoubtedly genuine and recommending its confirmation to the full extent of the boundaries as called for in said titulo of 1807.

Said Gandara died in the year 1879, and said Aguilar died in the year 1886.

Said Sykes sold and deeded an undivided $\frac{3}{16}$ interest in said lands to John Currey on the 26th day of November, 1878, for the sum of \$9,000.

Said Sykes and Currey deeded said lands to the Calabasas Land and Mining Co., a corporation, on December 18, 1879.

Said Calabasas Land and Mining Co. deeded said lands to the Santa Rita Land and Mining Co. of Colorado, a corporation, on September 21, 1881.

Said Santa Rita Land and Mining Co. mortgaged said lands to Solomon S. Sleeper and Edward H. Mason, both of Boston, Mass., as trustees, on March 1, 1886, for the sum of \$250,000.

Said Sleeper and Mason, as such trustees, sold said lands

to satisfy said mortgage on the 11th day of February, 1890, to George B. Wilbur, William E. Putnam, Pliny Nicholson, and William A. Pierce, all of the State of Massachusetts, for the sum of \$65,000, as a purchasing committee for the holders of the bonds which were secured by said mortgage.

Said Wilbur, Nicholson, Putnam, and Pierce, as such committee, conveyed said lands on May 9, 1892, to William Faxon, Jr., of Boston, Massachusetts, as trustee, to hold the same for parties owning \$237,000 of said bonds, the other \$13,000 of bonds having been satisfied and paid.

About one hundred persons are named as codefendants with the United States in our petition.

They are all parties who squatted upon these lands and took forcible possession of the same after the lands were withdrawn from entry by the Government and since the year 1880, although said Sykes took immediate possession in said year 1877, and although he and his successors in interest have maintained continual and uninterrupted possession ever since, and have continually been assessed for and paid the taxes upon the whole thereof.

One of said defendants, who name appears as "John Doe," is Henry O. Flipper, a Special Agent of the Department of Justice, who admitted that he still claims 160 acres of the best part of said lands while testifying as the sole and only witness produced by the Government to dispute the location of the boundaries of this grant as established by appellant. The other squatter defendants were represented upon the trial of the case by an intelligent and experienced attorney (William H. Barnes), but not a single one of them testified in the case or in any way undertook to dispute the location of the boundaries of the grant as claimed by us.

Three claimants filed petitions alleging ownership of this grant; but one of them, George Hill Howard, simply claims to own an interest in the same under this appellant by virtue of a certain contract alleged to have been made by said Gandara to one Claude Jones, purporting to convey a

limited part of this grant for services to be performed by him in aiding to secure its confirmation as an attorney.

The third petition is filed by certain claimants who declare themselves to be the heirs of said Francisco Alejandro Aguilar, and who conveyed a certain interest in any land or property they might own in Arizona to one Santiago Ainsa upon condition that he secure confirmation to the title of the same. Said Ainsa contends, on behalf of these claimants and himself, that the deeds of 1856 and 1869 from said Aguilar to said Gandara only conveyed a life estate in said lands because the word "heirs" is not specifically used in the granting clause in either of said instruments.

The possession of these lands by said Gandara for at least two years prior to the Gadsden Treaty was established by fifteen witnesses on the part of this appellant, and was not disputed by the Government.

It was also shown that on March 31, 1856, before the judge of the second instance of the district, said Francisco A. Aguilar made a conveyance of said land to said Manuel Maria Gandara, at the city of Guaymas, in said State of Sonora, and said Gandara then and there exhibited said original titulos of 1807 and 1844; that José Aguilar, the brother of said Francisco A. Aguilar, was at that time the Governor of the Department of Sonora, and that said Gandara headed a revolution against José Aguilar in the following month of April, 1856, and that said Gandara was compelled to flee from that part of the country in June or July, 1856, and that one Pesquira captured said city of Guaymas not later than September, 1856, after a determined battle with the forces of said Gandara, and took possession of the government of said Department by force of arms, and continued to act in said capacity of Governor for some considerable time thereafter.

It was also shown that said Pesquira confiscated all the personal property of Gandara which he could find in said Department of Sonora, and likewise took possession of all

the real property of said Gandara, and attempted to confiscate that also.

It was further shown that early in the month of February, 1857, said Pesquira appointed an examiner to take possession of the Treasury office of said Department of Sonora, and that said examiner, one Torebiro Gutierrez, removed from the archives of said Treasury Department four expedientes of land grants, and that among them were the expedientes of the Tumacacori and Calabajas land grant which was owned by said Gandara.

The original documents appointing said Gutierrez as examiner and the receipt given for said expedientes were introduced in evidence and submitted to the examination of said Court of Private Land Claims, and certified photographic copies of the same were filed with said court. Said original papers were produced by B. Rochin, the official Keeper of the Archives of the present State of Sonora, and he testified that they are a part of the archives which are in his possession, and that they were a part of said archives at the time he took possession of the same, as the official custodian thereof, in the year 1887, and that he found them in a box in said office, among a mass of other documents relating to land titles. He also testified that the handwriting on said papers was the same as that of many documents relating to land titles which are in said archives and which bear date about the time of said papers, and that said handwriting was that of one of the clerks of said Treasury Department at said period.

Said papers were also identified, and their genuineness and authenticity sworn to by one Eufemio Tapia, who was the acting Treasurer of said Department at the date of the execution of said papers and who signed one of the same as such officer. Said Tapia testified that said papers were seen by him at the time they were executed, and that they were executed upon the days they bear date, and he further testified that he at that time had in his hands the original

expedientes of Tumacacori and Calabasas land grant claim and delivered the same to said Gutierrez.

It was also shown that the book of Cargo y Data for said year 1844 is missing from the archives of said Treasury Department, and that the contents of said archives were in almost hopeless confusion as late as the year 1887, when said B. Rochin took possession of the same as the official keeper thereof, and that an attempt was then made by him to straighten out the records and make an exact and detailed statement of the contents thereof, and that said statement was published by him in the year 1889. Said statement is in evidence in this case.

It was also shown that frequent revolutions occurred in said State of Sonora and said Department of Sonora from the year 1835 until after the year 1865, and that it was a common thing for the successful revolutionists to destroy the papers and records contained in the archives of the Treasury Department.

It was also shown that the archives at Hermosillo now contain but two books of Toma de Razon; that the first one is a very small book, without a cover, containing only a few entries or notes of sales of land, covering part of the year 1824 and part of the year 1825; that the other book of Toma de Razon consists of but 82 leaves stitched together, with a parchment cover, and containing the entries or notes of sales of land beginning in the year 1831, the date at which the Commissary General for the State of Sonora was first authorized by law, and ending in the year 1849. This book of Toma de Razon is not numbered. It contains no grants of land for the years 1840, 1842, 1844. The archives of said State of Sonora contain expedientes of grants of land made in each of said years, and especially in the year 1844, as shown by such statement or record of the expedientes contained in the archives, which was prepared by said B. Rochin; and said statement also shows that there are 742 expedientes in said archives which are complete in

every respect, and which contain endorsed upon them the statement that the money was properly paid into the Treasury for the land described in said expedientes, and that a titulo for the same was issued. But said two books of Toma de Razon contain a list of only 365 titulos. Many inaccuracies also occur in said books of Toma de Razon, and quite a number of entries therein bear date as of an earlier period than the entries immediately preceding them.

The original titulos of 1807 and 1844 were admitted in evidence without objection after full proof of their genuineness.

No evidence was offered on the part of the Government attacking the authenticity and genuineness of any of the papers offered in evidence by the petitioner.

The boundaries of said grant were established by overwhelming evidence, in accordance with the call of said titulo of 1807 and the testimony of witnesses attached thereto, and no serious effort was made on the part of the Government to defeat the establishment of said boundaries as therein set forth, except as to the east center monument of the Calabasas grant, and it was conceded by the evidence on the part of the Government that by striking out the words "Cerro San Cayetano" from one part of the description of said east center monument as surplusage and error, said Calabasas grant can easily be located according to the calls of said expediente of 1807.

The testimony of witnesses attached to said expediente of 1807 demonstrates beyond all question that said words "Cerro San Cayetano," or, rather, the words "San Cayetano," were inserted in said description by mistake.

It is conceded upon the part of the Government that Ignacio Lopez, who executed the titulo or patent of 1844 which was delivered to said Aguilar as grantee, is the national officer who possessed the proper political power at said time to execute said titulo or patent; but a bare majority of three members of the Court of Private Land Claims

rejected this grant upon the sole ground that said granting officer did not cause the auction sale of said lands to be made in the proper manner. Said Treasurer General made the sale himself and said Court held that the power to make sales of land was vested only in two Boards of Sale, one of which was created under the regulations of July 20, 1831, and the other under the law of April 17, 1837.

In the titulo of 1844 the granting officer expressly recites the fact that he made the sale alone by virtue of Article 73 of said law of April 17, 1837, because the land did not exceed in value the sum of five hundred dollars.

This appellant duly appealed to this Court from the decree of said Court of Private Land Claims rejecting this grant.

ARGUMENT.

There are just three principal questions involved in this case, to wit:

1. Did the officer who made the grant transcend his powers in making it?

2. Was the grant located and duly recorded in the archives of Mexico prior to the Gadsden treaty?

3. Can the grant be located upon the earth's surface from the calls of the title papers, or by the testimony of witnesses, as a well-known place, or is it void for uncertainty?

A bare majority of three members of the Court of Private Land Claims rejected this grant "for want of power on the part of the officer attempting to make it." The fourth member of that court, Justice Fuller, dissented from this opinion, and the fifth member of said court took no part in either the hearing or the determination of the case. One of the three members of that court, Justice Murray, who concurred in rejecting the grant upon the first ground, wrote an opinion rejecting it upon the additional ground that it was not duly recorded in the archives of Mexico, for the reason only that no record of the same appears in any book of "Toma de Razon;" and the fourth member of said court, Justice Fuller, concurred in rejecting the grant upon this latter ground while dissenting upon the first ground. It is proper to add that a majority of said court had previously decided the other way, upon this second ground of rejection, in the case of *The U. S. vs. Earl B. Coe*, which is now on appeal to the October term, 1896, of this court as case No. 45.

The writer has been fortunate enough to be presented with a copy of the brief on the part of the United States in

this case, and in consequence of that fact this argument will be in part a reply to the position assumed by the Government upon the questions involved. Two-thirds of the brief on the part of the Government is devoted to an attempt to demonstrate as a fact that this grant is void for uncertainty, and cannot be located upon the earth's surface from the calls of the title papers. Only eight pages out of the seventy-nine contained in that brief are addressed to the question of the power of the granting officer to make this grant, and that is the very last question discussed in said brief.

This method of presenting the case on the part of the attorneys for the Government may properly be characterized as significant and peculiar, to say the least, and it will hardly be contended with any force that it indicates very much faith on their part in the correctness of the position assumed by the Court of Private Land Claims upon the only question seriously considered by it. At least the writer must hesitate to accept any other view of their brief, as to do so would be equivalent to acknowledging that their brief is a severe reflection upon the value of the necessarily long argument presented by him on this question.

I must confess that the conclusion at which a person will arrive who undertakes to investigate the validity of the title of one of these Mexican land grants will depend largely upon the frame of mind in which he approaches the subject. Without knowing the history of Mexico, and especially that of the State of Sonora, and without being familiar with the condition of the public archives in that State, if a lawyer attempts to pass upon the validity of one of those titles by applying the strict principles of the common law only, and upon the theory that he is examining an abstract of title for the purpose of giving his opinion as to the advisability of making a substantial loan to be secured by a mortgage upon the land, for a banking corporation which makes it a rule never to accept the faintest semblance of a moral risk, it is true that quite a number of the grants in Arizona would

fail to stand the test; but if these titles are to be examined from the standpoint of a great nation that has plighted its honor and its faith to maintain inviolate the rights of private property, and to recognize all grants which would be recognized as good and valid by the Government which ceded the territory within which they lie, it must follow as night follows day that practically all of the grants in Arizona which have come before the Court of Private Land Claims must be sustained as valid.

It is now forty-four years since the Government of the United States acquired by purchase the land within the Territory of Arizona. Until March 3, 1891, Congress reserved to itself the right to determine the validity of the titles to Mexican private land claims within that Territory. Within a few years after the Gadsden purchase Congress itself confirmed quite a number of land claims lying within the present boundaries of New Mexico and Colorado, and in so doing it made serious blunders, and confirmed one grant for 1,714,764 acres and another for 1,000,000. Congress has shamefully denied justice to every honest grant claimant within the region of the Gadsden purchase for nearly a quarter of a century. (See Public Domain, p. 1117.) The plighted faith and honor of the Government had been dragged in the dust by the inaction of its political representatives, and the boasted guarantees of our glorious Constitution have been of no avail in protecting and guaranteeing a grantee of the Mexican government in either his alleged principality or his actual mess of pottage. In a letter to the Mexican Minister of Foreign Relations our Secretary of State said:

"It is our glory that no power exists in this country which can deprive one individual of his property without his consent and transfer it to another. If grants of land in Texas under the Mexican government possesses valid titles they can maintain their claims before our courts of justice."

Again, said our Secretary of State:

"The property of foreigners, under our Constitution and laws, will be equally secure without any treaty stipulations."

Again, he says:

"And here it may be worthy of observation, that if no stipulations whatever were contained in the treaty to guarantee to the Mexican inhabitants and all others protection in the free enjoyment of their liberty, property, and the religion which they profess, these would be amply guaranteed by the Constitution and laws of the United States. These invaluable blessings under our form of government do not result from treaty stipulations, but from the very nature and character of our institutions."

As was said by this court in *De Lasses vs. U. S.*, 9 Peters, 133:

"Independent of treaty stipulations, this right (the perfect inviolability and security of property) would be held sacred. The sovereign who acquires an inhabited territory acquires full dominion over it, but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana excludes every idea of interfering with private property; to transfer lands which had been severed from the royal domain. The people change their sovereign. Their right to property remains unaffected by this change. The inquiry, then, is whether this concession was regularly made by the proper authorities," etc.

In view of these statements it would have been better for its citizens if Mexico had not stipulated in the treaty for the protection of their property in the ceded territory. These extracts from the letter of our Secretary of State read like mere Fourth-of-July orations when taken in connection with the facts in relation to the grant which is now here before this court.

POSSESSION ONE OF THE HIGHEST EVIDENCES OF TITLE
KNOWN TO THE COMMON LAW, AS WELL AS TO THE CIVIL
LAW.

It is overwhelmingly established by the evidence in this case—and the fact was not disputed by the Government upon the trial of the case—that Manuel Maria Gandara was the original equitable owner of this grant at the time it was made in 1844 to Francisco Alejandro Aguilar, in the year 1844, the latter having taken the legal title as trustee for said Gandara, and that said Gandara took possession of this grant not later than the early part of the year 1852, and maintained said possession without interruption until at least as late as the end of the year 1856, and that said Gandara resumed possession again as early as the year 1861, and continued to maintain said possession through himself and his successors in interest, including this petitioner, until the present time; that one of the sons of said Gandara was killed upon said land while maintaining such possession, in the year 1862; that in said year 1852 said Gandara placed as many as from 30 to 50 families upon said land, together with from 5,000 to 6,000 head of sheep and other stock, and had said families cultivating the agricultural lands upon all parts of the grant and manufacturing blankets from the wool of said sheep. The testimony further shows that said Gandara, in said year 1852, placed extensive and costly improvements, in the shape of houses, fences, corrals, etc., costing thousands of dollars, upon said lands. It further shows that many of these settlers were killed by the Indians prior to the time the American troops took possession of Arizona, in 1855, as well as afterwards, and many of his sheep and other stock were frequently killed or driven off by said Indians.

These facts were established by as many as 15 witnesses, including natives of the mission of San Xavier, the

nearest mission to this grant, which is still existing in Arizona, and natives of the town of Santa Cruz, which was then the nearest town to this grant within the present limits of Mexico, and by ex-soldiers of the Mexican army who were located in that vicinity at the time, and by American citizens who came into that region of country in the early part of the year 1854 upon the Southern Pacific Railroad survey and upon the International Boundary survey.

See Record, pp. 54 to 96.

Ex's E to O, pp. 284-308; 180-'1, 185.

Peter R. Brady, an American citizen, who first went to Arizona in April, 1854, upon the survey of the Southern Pacific railroad, testified that he stopped at Calabasas upon his arrival and found settlers there and at Tumacacori who were holding possession of the land for said Gandara; that they were cultivating the lands and manufacturing serapes and had a large band of sheep and other stock; that they had very extensive adobe houses, built in the old Mexican style, with a large portal and entry in them and a courtyard inside; that the Apache Indians attacked the ranch while he was there and were driven off by Mexican troops who came from Tucson, which is about 60 miles away.

Mr. Brady stated that the Mexican troops never left Tucson until Christmas eve, 1854, when they pulled down the Mexican colors on the plaza and marched out. He said:

"There was only the one settlement at Calabasas, under Hulseman, and the three Germans I spoke of at Tumacacori, outside of the walled garrison at Tucson, at that time; no other Europeans or Mexicans in the whole Territory. This was due to Apache raids, I suppose. We passed through a great many abandoned ranches on the San Pedro and Babacomori. There was nothing but desolation and ruin. It was dangerous to go outside of the limits of the town of Tucson, almost. The Apaches killed people within a mile of town here years afterward. Property or life was not safe anywhere outside of the walled garrison of Tucson." (See Record, pp. 58, 59, 60, 74, 75, 76.)

We produced as witnesses or accounted for the absence of every person who ought to have had a personal knowledge in regard to these facts. I particularly invite the attention of the court to the testimony of the witness Theodora de Troil, at pages 54, 55, and 56, and at pages 95 and 96 of the Record. She is a native of the neighboring mission of San Xavier, 54 years of age, and is a sister of the wife of said Hulseman, who was the superintendent of this Calabasas grant for said Gandara from 1852 to 1856. I also invite the attention of the court to the testimony of Jesus Maria Elias, at pages 61 to 71 of the Record. This witness was born at Tubac, a place adjoining this grant on its northern boundary, in the year 1828, and his father and mother were married at Tumacacori, in the church which was taken as the center of this grant, and his elder sister was born at Calabasas, upon this grant. He lived at Calabasas for two or three years, and at the age of 7, in the year 1835, was taken to Tucson to reside. He passed the grant prior to the year 1844 in going over the trail to said town of Santa Cruz and found it abandoned. He again passed the grant in 1852 and found it settled by and in the possession of said Hulseman and about 30 or 40 Mexican families, who were all working for said Gandara.

This witness, Jesus Maria Elias, identified all the places the natural landmarks called for in the title papers of the grant. All of his statements in regard to both the possession and the landmarks and places were corroborated by other witnesses.

The Government did not dispute the correctness of the testimony of this witness as to a single point, and it made no attempt to impeach the credibility of any one of our witnesses in any respect.

The earliest date at which we were able to furnish positive and affirmative proof of possession is the year 1851 or early in the year 1852, but the evidences of possession existing in the early part of the year 1852 in the shape of improve-

ments upon the grant demonstrate that possession was actually taken as early as 1850, perhaps, and not later than the middle of the year 1851.

It must be remembered that this grant is located upon what was at that time the frontier of the State of Sonora. It was made in 1844, and hostilities between Mexico and this country commenced in the year 1845 and lasted until late in the year 1848. This fact alone would account for Gandara not having taken possession of the land until as late as the year 1849, even if he had not been actively engaged as a leader in politics in Sonora during that stormy period of its history. The danger from American troops, added to the danger from Apache Indians, was sufficient to deter almost any man from risking a large investment in live stock and improvements in that exposed place.

Jesus Maria Elias testified at page 63 of Record that in the year 1848 he met three surveyors at the mission of San Xavier, who had just completed the survey of the Calabasas and Tumacacori grant for the government of Sonora. This would indicate that Gandara instituted steps to take possession of the grant immediately upon the close of our war with Mexico, and a short time thereafter we find him in possession and the land is stocked with sheep and has many valuable improvements upon it.

EFFORTS OF GANDARA TO ESTABLISH TITLE.

A law was enacted by Congress in 1863 providing for the appointment of a surveyor general in Arizona and giving him jurisdiction to examine and report upon the titles to Mexican land grants located within that Territory.

In June, 1864, said Gandara promptly availed himself of this apparent opportunity for establishing and quieting his title as against the United States. He filed his original title papers with said surveyor general and pressed for an examination into their authenticity and validity at a time when

there were numerous living witnesses to affirm or controvert the truth of the facts recited in his title papers. The question of the due record of the grant could then have been easily settled by living witnesses, and the question of the *bona fides* of his occupation and possession prior to the treaty could have been determined by the testimony of the very men whom he employed to settle upon and cultivate said land for him. (Record, p. 285.)

Gandara was unfamiliar with the laws of this country, as is evidenced by the character of the deed from Aguilar to him which is dated March, 1856, and likewise by that which is dated March 2, 1869. This latter deed was evidently suggested by some American lawyer, upon the theory that the deed of 1856 did not sufficiently comply with the laws of Arizona to effect a conveyance of the fee. Even this latter deed was not sufficiently explicit and formal to prevent certain heirs of Aguilar from claiming that it does not convey the fee to said lands, and this accounts for the fact that other petitioners are claiming to own this grant.

Having evidently despaired of ever securing a settlement of his title, said Gandara sold and conveyed said grant to an American citizen, C. P. Sykes, in the year 1877, for the consideration of \$12,000. Sykes took immediate possession, and in the year 1879 he filed a new petition with said surveyor general for the confirmation of this grant. The surveyor general thereupon caused the record of said grant to be investigated in the archives of Mexico by R. C. Hopkins, a special agent of the Department of the Interior, and upon the report of said Hopkins and other testimony said surveyor general duly reported to the Commissioner of the Land Office that this grant is undoubtedly genuine and ought to be confirmed to its boundaries, as set forth in the expediente and in the titulo of 1807, which is now on file with the clerk of this court. Said surveyor general also caused a survey to be made of said grant under his own direction and control by one Harris, a deputy United States surveyor, then

in the employment of the Government, and the map made by said Harris shows that he adopted the same natural landmarks as the boundaries of said grant, which are set forth in the map filed by the petitioner in this case (p. 180).

SEIZURE OF THE BEST LANDS BY SQUATTERS.

The lands comprised within this grant were withdrawn from entry as early as the year 1870, and up to that time no one but Gandara and his employés had dared attempt to hold possession of the lands against the raids of the Apache Indians. In fact it was not until after the Southern Pacific railroad had been completed in the year 1882 that any squatter cared to occupy these lands, the possession of which had been maintained by Gandara and his grantees against the savage Apaches for more than thirty years, but as soon as life and property were perfectly safe in that section of the country squatters rushed upon the land and forcibly seized all the best lands. (Record, pp. 176-177, 100.)

The squatters were represented by especial counsel in this case. (Record, pp. 12, 23.)

Henry O. Flipper, now a special agent of the Department of Justice, and the only witness on the part of the Government who has attempted to defeat the location of the boundaries of this grant as claimed by us, enjoys the distinction of being one of those violaters of natural justice and of common respect for the rights of others; he still claimed squatter rights upon this grant at the date upon which he testified in this case. (See Record, p. 205.)

The courts of justice in Arizona have held that they had no jurisdiction to entertain even an ejectment suit where the title to a Mexican land grant in anywise came in question. Force of arms had enabled the owners of this grant to maintain their possession against the ferocious Apaches, but even this argument failed them as against the civilized invaders who followed in the wake of the United States sol-

diers and the railroad, and who are now here as codefendants with the United States Government, asserting that they have equitable rights which are higher than ours in the property they took from us by force while we were in the open and notorious, if not peaceable, possession of the same.

The testimony shows that these squatters have constantly cut and destroyed our fences, besides occupying our best lands, and that they have been and are still denuding the grant of its timber; and the testimony further shows that the courts of Arizona repudiate the possession of any power on their part to grant us any relief.

These courts of Arizona have not refused to entertain tax suits, however, and the only privilege accorded a grant-owner in that Territory has been the doubtful one of being allowed to pay and required to pay exorbitant taxes upon the entire grant for the support of a government to enforce laws for the protection of all property except that upon which said tax is paid.

This is the story in brief of the manner in which this great nation has thus far executed its contract with Mexico to preserve inviolate the rights of private property within the Territory of Arizona.

POWER OF THIS COURT IN DETERMINING VALIDITY OF TITLES.

In 1891 Congress shifted the burden of responsibility from the political arm of the Government to the judiciary by the passage of the act creating the Court of Private Land Claims. It is now urged by the attorneys for the Government that Congress intended to do a still greater injustice to the grant-owners and to practically confiscate many of the grants by confining the power of the courts in determining the validity of these titles within very strict and narrow lines. I am loath to concede this construction of the act of Congress. While that body might be guilty of gross injustice by reason of inaction on the part of a majority of its members, I can-

not believe that a majority of those members would by any affirmative action intentionally deprive a single grant-owner of any of the rights he would have enjoyed had his property remained within the jurisdiction of Mexico.

The contention that Congress intended by said act to deprive this court of the right to apply the well-known principles of equity in determining the validity of these titles to land grants is based upon a very narrow and illiberal construction of that act, it seems to me, and is not in harmony with the established rules of construction for such laws.

This contention is based upon the language used in sections 7 and 13 of said act. Section 7 provides—

“That all proceedings subsequent to the filing of said petition shall be conducted, as near as may be, according to the practice of the courts of equity of the United States,” etc.

The words “all proceedings subsequent to the filing of said petition” must certainly include the taking of the testimony, and likewise the rules of evidence which shall be applied in rejecting or admitting evidence.

The same section proceeds to provide—

“That the court shall have full power and authority by a final decree to settle and determine the question of the validity of the title and the boundaries according to the law of nations and stipulations of the treaties concluded between the United States and the Republic of Mexico, at the city of Guadalupe Hidalgo, on the 2d day of February, A. D. 1848, or the treaty concluded between the same powers, at the city of Mexico, on the 30th day of December, A. D. 1853, and the laws and ordinances of the government from which it is alleged to have been derived,” etc.

It is further urged on the part of the Government that because this enumeration of the laws by which the court shall be controlled in determining the validity of the title

and the boundaries of the grant omits to use the words "principles of equity," "usages," and "customs," the effect of the act is to deprive the court of the power to apply the principles of equity upon the determining of the validity of a title to a grant or the location of its boundaries, and is likewise to deprive the court of the right to take into consideration the usages and customs of the government which made the grant in determining its validity or its boundaries.

It is a well settled rule of construction that treaties are to be liberally construed in their application to private rights of property, and it must be equally clear that in order to give full effect to this rule all acts or laws intended to provide the means for fulfilling the obligations of such a treaty ought to receive the same liberal construction. In the case of *Phelps vs. The City of Panama*, 1 Washington Ty., 533, decided in 1877, the court said :

"The term 'laws' includes not only written expressions of the governing will, but also all other rules of authority and conduct in which the supreme government exhibits, and according to which it exerts, its governmental force."

This definition would certainly include "the principles of equity," as well as "usages" and "customs."

But we are not left in doubt as to the meaning which ought to be given to the word "laws" in this act, for in the case of the *United States vs. Arredondo*, 6 Peters, 714, this court said :

"The principle that the acts of a king are in subordination to the laws of the country applies only where there is any law of higher obligation than his will. The rule contended for may prevail in a British, certainly not in a Spanish, province. There is another source of law in all governments, *usage* and *custom*, which is always presumed to have been adopted with the consent of those who may be affected by it. In England, and in the States of this Union which have no written constitution, it is the *supreme* law ; always deemed to have had its origin in an act of a State

legislature of competent power to make it valid and binding or an act of Parliament, which, representing all the inhabitants of the kingdom, acts with the consent of all, exercises the power of all, and its acts become binding by the authority of all (2 Inst., 58; Willes, 116). So it is considered in the States and by this court (3 Dall., 400; 2 Pet., 656-7). A general *custom* is a general *law*, and forms the law of a contract on the subject-matter; though at variance with its terms, it enters into and controls its stipulations as an act of Parliament or State legislature.

"The courts not only *may*, but are BOUND to, notice and respect *general customs and usage* as the *law* of the land *equally* with the *written law*, and when clearly proved they will *control* the general law. This necessarily follows from its presumed origin—an act of Parliament or a legislative act. Such would be our duty under the second section of the act of 1824, though its *usages and customs* were *not* expressly named as a part of the laws or ordinances of Spain. The first section of that act, giving the right to claimants of land under titles derived from Spain to institute this proceeding for the purpose of ascertaining their validity, and jurisdiction to the court to hear and determine all claims to land which were protected and secured by the treaty, and which might have been perfected into a legal title under and in conformity to the law, usages, and customs of Spain, makes a claim founded on them one of the cases expressly provided for. We cannot impute to Congress the intention only, not to *authorize* this court, but to *require* it, to take jurisdiction of such a case, and to hear and determine such a claim, according to the principles of justice, by such a *solemn mockery* of it as would be evinced by *excluding from our consideration* USAGES and CUSTOMS, which are the *law* of EVERY government, for no other reason than that in referring to the *laws and ordinances* in the second section Congress had not enumerated all the *kinds* of *laws and ordinances* by which we should decide whether the claim would be valid if the province had remained under the dominion of Spain; we might as well exclude a royal order because it was not a law. We should act on the same principle if the words of the second section were less explicit, and according to the rule established in *Henderson vs. Poindexter*, 12 Wheat., 530, 540."

The question under the act creating the Court of Private Land Claims is, Was the grant "lawfully and regularly derived"? and the very question decided in the Delassus case just cited was that the real question there at issue under the Louisiana treaty is "whether this concession was REGULARLY made by the proper authorities."

A grant "*made by the proper authorities*" is a grant "*lawfully*" made, and hence the court has the same identical question to decide under this act creating the Court of Private Land Claims as it had under the Louisiana treaty, to wit, Was the grant "*regularly made by the proper authority*"? and it has no other question to decide whatsoever; and in deciding this question it is "*bound* to notice and respect general customs and usages as the law of the land equally with the written law;" and how is it possible to pass on the validity of incomplete or imperfect grants except by applying the well-known principles of equity which Mexico herself would apply in a similar case?

Can a case be conceived in which the decision would more pointedly decide the exact question involved in this contention on the part of the Government than the one just cited?

But it is further contended that under subdivision 1 of section 13 of said act creating the Court of Private Land Claims the power which this court exercised in applying the principles of equity and the well-settled presumptions of law to the question of the validity of titles to land grants arising under the treaties by which we acquired Louisiana and Florida, and the acts of Congress providing for the fulfillment of our obligations under those treaties is narrowed and limited by the following language, to wit:

"No claim shall be allowed that shall not appear to be upon a title *lawfully* and *regularly* derived from the government of Spain or Mexico or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one, that if not then complete and perfect at

the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound upon the principles of public law or by the provisions of the treaty of cession to respect and permit to become complete and perfect if the same were not at said date complete and perfect."

The question immediately arises, What is meant by the words "a title lawfully and regularly derived"? We have already seen that the word "laws" includes usages, customs, and principles of equity, and therefore it must follow that "a title lawfully derived" simply means one which was derived in accordance with the laws, principles of equity, and usages or customs which were recognized by and were in force in the country which made the grant at the time the same was made.

But the attorneys for the Government contend that the word "*regularly*" imports something more and additional into the statute. Fortunately, we also have the decision of this court as to the meaning of that word when applied to grants as in this statute.

In the case of *White et al. vs. Burnley*, 20 How., 247, this court said:

"The next question appears on the face of the grant. All the steps leading to the grant, with one exception, are regular. The quantity of land that the lines of survey include is equal to two leagues, whereas only one league is called for, and the reason the surveyor gives in his certificate of survey for the excess is that he included in the survey a bay of the ocean, which was not subject to grant, a quantity equal to a league. This statement was proved to be *untrue—almost entirely*. The grant contains two leagues and more of fast land, and for this reason it was insisted at the trial that it was fraudulent and void. But the court charged the jury to the contrary, with several qualifications. This we deem to have been useless, as our opinion is that a *regular* grant (that is, a completed title made by those exercising the proper political power to grant lands) is not open to

these objections by an opposing claimant setting up a younger title."

The court goes on to say how far the government of Texas might interfere in due course of law (that is, by a suit in its name and behalf) is a question for the Government to decide. *Owen vs. Rains' lessees* (5 Haywood's Tenn. R., 106) is to the effect that it can only be done by suit.

This court has here expressly defined the words "a regular grant" as being "a complete title made by those exercising the proper political power to grant lands." Applying this definition to the statute we are construing, it will follow that "a title regularly derived" would mean a *completed title* made by those exercising the proper political power to grant lands. In a case, therefore, where the claimant has a titulo which is executed in due form of law by an officer who was exercising the proper political power to grant lands, such claimant holds a title which was "*regularly derived*," and if, for any reason, it is subject to attack upon the ground of fraud in its issue, either on the part of the officer who made the grant or on the part of the grantee in securing the same, such attack can only be made in "due course of law."

In applying these principles to a patent from the United States, this court has said in the case of the *United States vs. Marshall Mining Company*, 129 U. S., at pages 588, 589.

"If the officers of that department of the Government have acted within the general scope of their powers and without fraud, the patent which has issued after such proceedings must remain a valid instrument, and the court will not interfere unless there is such a gross mistake or violation of the law which confers their authority as to demand a cancellation of the instrument."

And again :

"The dignity and character of a patent from the United States is such that the holder of it cannot be called upon to prove that everything has been done that is usual in the

proceedings had in the land department before its issue, nor can he be called upon to explain every irregularity or even impropriety in the process by which the patent is procured."

The same principle was applied to a Mexican grant title by this court in the case of *Hornsby vs. U. S.*, 10 Wall., 237.

There is certainly nothing in the provisions of the act creating the Court of Private Land Claims which would require this court to adopt any different rule of law than those expressed in these quotations in determining the validity of the title and the boundaries in a Mexican grant in Arizona. The words in the first subdivision of section 13, that "the claimant would have a lawful right to make perfect had the Territory not been acquired by the United States," certainly do not change the obligations which were recognized by this court in the Florida and Louisiana treaties and the acts of Congress for carrying them into effect, for "a lawful right to make perfect" simply means *such a right as the granting Government would itself have recognized* according to the principles of equity, its laws, usages, and customs or ordinances. If such a right exists, this Government is bound to respect it. If the claimant would have had an equity under the granting government, then it must follow that he still has an equity under this Government, and he has a right of property which the faith and honor of this country has been pledged to respect, and this court will certainly not construe any act of Congress as intending to deprive him of any such right unless it contains words which unavoidably require such a construction.

What rights are the United States bound "upon the principles of public law or by the provisions of the treaty of cession" to respect and permit to become complete and perfect if the same is not at said date already completed and perfected? By the principles of public law, *all* property

rights are held inviolate. Can it be doubted for one moment that an equitable title to land, based upon the laws, usages, and customs of the country which made the grant, is a right of property which Mexico intended to be included within the term of the Gadsden treaty?

The Commissioner of the General Land Office, by his instructions to the surveyor general of New Mexico, on August 25, 1854, as published in "The Public Domain," at page 395, said :

"The treaty of 1848 between the United States and Mexico expressly stipulated in the eighth and ninth articles for the security and protection of private property. The terms there employed in this respect are the same in *substance* as those used in the treaty of 1803, by which the French Republic ceded the ancient province of Louisiana to the United States, and consequently in the examination of foreign titles in New Mexico you will have the aid of the learned decisions of the Supreme Court of the United States upon the titles that were based upon the treaties of cession and the laws of Congress upon the subject."

"The security of private property for which the treaty of Guadalupe Hidalgo stipulates is in accordance with the principles of public law as universally acknowledged by civilized nations."

He then quotes from the decision of this court in the case of the *United States vs. Percheman*, 7 Peters' Reps., as follows :

"The people change their allegiance; their relation to their ancient sovereign is dissolved, but their relation to each other and their rights to property remain undisturbed."

And, again, he quotes from this court in the case of *U. S. vs. Arredondo*, cited *supra*, as follows :

"The Supreme Court declared that Congress have adopted as a basis of all their acts the principles that the law of the province in which the land is situate is the law which gives efficacy to the grant and by which it is to be tested whether it was property at the time the treaties took effect."

I insist that the act creating the Court of Private Land Claims is as broad in its provisions as those which were enacted by Congress for the carrying into execution of the obligations of this Government under the treaties of Louisiana and Florida.

This court is directed by the act to be guided by the provisions of the treaty of Guadalupe Hidalgo, and the commissioner was certainly correct in stating that its provisions are the same "in substance" as those used in the treaty of 1803, by which the French Republic ceded the ancient province of Louisiana to the United States.

This act was originally introduced in the United States Senate in almost the identical form in which it was finally passed, by that learned lawyer, Senator George F. Edmunds, of Vermont. It is to be presumed he was familiar with the meaning of the words "lawfully" and "regularly," as already defined by the prior decisions of this court. It was recommended for passage by the Public Land Commission, which was appointed under acts of March 3, 1879, and June 16, 1880, by a report, in which that commission apologetically explained the long inaction of Congress upon these private land grant titles and acknowledged the injustice of the long period of delay which had been permitted to elapse.

It seems to the writer that it would require strong language, indeed, in this act to lead this court to adopt a construction of its provisions which would prevent the court from enforcing those principles of justice which have illuminated its decisions in the past.

This court has already said, speaking through Justice Shiras—

"We do not so regard that provision (referring to the provision of the act creating the Court of Private Land Claims) nor do we perceive in any features of the act an intention on the part of Congress to restrict the powers of the court recognized by the previous decisions."

In the case of *Fremont vs. United States*, 17 Howard, 541, Chief Justice Taney, in speaking for this court, said :

"It is proper to remark that the laws of these territories (Mexican) under which titles were claimed were never treated by the court as foreign laws, to be decided as a question of fact. It was always held that the court was bound judicially to notice them, as much so as the laws of the state of the Union. In doing this, however, it was undoubtedly often necessary to inquire into official customs and forms and usages. They constitute what may be called the common or unwritten law of every civilized country. And when there are no published reports of judicial decisions which show the received construction of the statute, and the powers exercised under it by the tribunals or officers of the Government, it is often necessary to seek information from other authentic sources, such as the records of official acts and the practice of the different tribunals and public authorities, and it may sometimes be necessary to seek information from individuals whose official position or pursuits have given them opportunities of acquiring knowledge."

In *Hornsby vs. United States*, 10 Wall., 224, at close of the opinion, this Court said :

"By the term 'property,' as applied to lands, all titles are embraced, legal or equitable, perfect or imperfect. It was so held by this Court in the case of *Soulard vs. U. S.*, 4 Pet., 511, when considering the import of the term in a stipulation contained in the Treaty by which Louisiana was acquired, providing that the inhabitants of that territory should be protected in the enjoyment of their property. 'It comprehends,' said the Court, 'every species of title, inchoate or complete. It is supposed to embrace those rights which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away.'"

It can hardly be doubted but that the many able lawyers in both the Senate and House of Representatives in the Congress of this nation knew that in using the word "laws"

they were thereby importing into the provisions of the act creating the Court of Private Land Claims "all official customs and forms and usages."

POWER OF GRANTING OFFICER TO ISSUE TITLE.

We are met upon the threshold of this case with the question of the power of the granting officer to make this grant, and as an adverse determination of that question would necessarily dispose of the other two questions involved, I shall address myself first to its consideration.

POINT I.

Did the officer who made the grant transcend his powers in making it?

It will be observed, and I desire to emphasize the fact, that the question *is not*, "Did the officer have power to make the grant?"

On the contrary, the only question is, it being conceded that the grant was made and executed in due form of law by the officer possessing the proper political power to do so, has it been established as a fact or as a necessary conclusion of law that he transcended his powers in making the grant by reason of sufficiently gross irregularities in the steps preceding the execution of the grant to thereby make the grant null and void, *ab initio*? It will be observed that a majority of the members of the Court of Private Land Claims rejected the grant "for want of power of the officer attempting to make it," but an examination of the opinion clearly shows that the court rejected the grant *solely* upon the ground that the officer who made the "sale" of the land did not have power, under the laws, to conduct the "sale" *alone*. It is conceded, as I understand it, on the part of the Government, that the officer who *did* execute the grant, *i. e.*, who signed the titulo or patent which was delivered to the grantee, was

the proper officer to perform *that act*, and possessed *ample power* so to do in all cases where the proper preliminary proceedings had taken place. This raises a very different question, it seems to me, from the one of the mere power of the officer to make the grant.

It is a well-settled rule of pleading, which is uniformly applied in courts of equity, I believe, that the plaintiff must allege in his petition every material ultimate fact necessary to entitle him to the relief prayed for. Section 6 of the act creating the Court of Private Land Claims prescribes with some minuteness what it will be necessary for the petitioner to allege in seeking confirmation of the title to a grant under said act.

It will be noticed that the petitioner is required to state the date and form of the grant and by whom made, but he is not required to state the law or laws by which the grant was made or by virtue of which the officer executing the grant exercised that power. It seems to me that the absence of this requirement plainly indicates that it being once established that the grant or title paper (patent) was duly executed by an officer possessed of the proper political power to execute the same, every presumption will at once arise in favor of the validity of the acts of such officer; and if it is proposed to set aside, to annul, or to declare void that written instrument for fraud or mistake in the execution of the instrument itself, as was said by this court in the case of *United States vs. Iron Silver Mining Company*, 128 U. S., 677 :

“ The testimony on which this is done must be clear, unequivocal, and convincing, and it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the position as thus laid down in the cases cited is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumption that all the

preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official documents, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof."

As was said by this court in that case:

"The Government has the same right to demand a cancellation of the conveyances of the United States when obtained by false and fraudulent representations as a private individual when a conveyance of his lands is obtained in like manner. In this respect the United States, as a landed proprietor, stands upon the same footing with a private citizen. *The burden of proof in such cases is upon the Government.* The presumption attending the patent, even when directly assailed, that it was issued upon sufficient evidence that the law had been complied with by the officers of the Government charged with the alienation of public lands, can only be overcome by clear and convincing proof."

As was said by Mr. Justice Miller in the *Maxwell land grant case*, 121 U. S., 325:

"The deliberate action of the tribunals to which the law commits the determination of all preliminary questions and the control of the processes by which this evidence of title is issued to the grantee demands that to annul such an instrument and destroy the title claimed under it, the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court, and that the cause itself must be within the class of causes for which such instrument may be avoided."

In the case of the *Colorado Coal Company vs. United States*, 123 U. S., 307, patent for coal lands was alleged to have been obtained by false and fraudulent papers made by the register and receiver of the local land office, combining with others in a conspiracy for that purpose; but the court, after refer-

ring to the doctrine declared in the Maxwell land grant case, said by Mr. Justice Matthews:

"It thus appears that the title of the defendants rests upon the strongest presumptions of fact, which, although they may be rebutted, nevertheless can be overturned only by full proofs to the contrary—clear, convincing, and unambiguous. The burden of producing these proofs and establishing the conclusion to which they are directed rests upon the Government. Neither is it relieved of this obligation by the negative nature of the proposition it is bound to establish."

Authorities are then cited to show that in some instances the burden of proving a negative rests upon the complainant, and especially so when the negative allegation involves a charge of fraud against the party of whose conduct complaint is made.

In the case of *United States vs. De Lassus*, 9 Peters, 117, Chief Justice Marshall said:

"A grant or concession made by that officer who is by law authorized to make it carries with it *prima facie* evidence that it is within his power. No excess of them, no departure from them, is to be presumed. He violates his duty by such excess and is responsible for it. He who alleges that an officer entrusted with an important duty has violated his instructions must show it."

This principle becomes a very important one upon an examination of the facts and laws upon which the Government relies to nullify the grant in this case. It will appear from the laws which will hereafter be cited by the writer that at the time this grant was made by the Treasurer General of the Department of Sonora he was the proper officer to execute the title and was directly responsible for all his acts to the governor, who was the chief executive officer of the department and who possessed the power to appoint and remove the Treasurer General. It will further appear that the governor was by law the chief of the Treasury Depart-

ment and had general supervision of the same, and was the only and necessary conduit of communication with the supreme authorities of the Republic.

It will further appear that the commandant general of the army had the right to inspect the office of the Treasurer General as frequently as he saw fit, and that it was his duty under the law to report any abuses he might observe to the supreme government.

It will further appear that the Treasurer General was required to hold meetings of the Board of the Treasury, consisting of himself, the Attorney General of the Treasury, the principal collector of the revenues, and the auditor of the treasury, and the governor, as the presiding officer, at least twice a month, and that the duty of the Board of the Treasury was to procure the prosperity and increase of the revenues of the Treasury.

It will further appear that it was the duty of the governor to preside over the Junta de Alamoneda or board of auctions, which it is claimed on the part of the attorneys for the Government is the only political body or officer authorized to make the "*sale*" of this grant.

And it will further appear that it was the duty of the governor to witness in person the monthly and annual cash statements made by the Treasurer General. All these officials presumably had their offices in the same building then as now.

All these facts, together with the presumption in favor of the validity of the acts of an officer as just quoted, have a direct bearing upon the question now under discussion.

The Court of Private Land Claims held that :

"On the Board of Sales created under the decree of July 20, 1831, and that of April 17, 1837, *alone* was this power conferred," *i. e.*, the power to make "*sales*" of land.

The officer who made this grant assumed that because its appraised value did not exceed the sum of \$500, he was

authorized to proceed *alone* in making the *sale*, and that it was not necessary to join with him the other members of the Board of Sales. From the facts just above recited, we are bound to presume that the governor, the Attorney General of the Treasury (if there was one), and the other members of the Board of Sales concurred in this view, of the power of the Treasurer General to make the *sale alone*. To hold otherwise is to presume that the Treasurer General committed a crime by withholding the \$500 which was the proceeds of the sale from the treasury, and by withholding a statement of the source of the same from his accounts, or else we must presume that the Commandant General of the Army never performed his duty of inspecting the office of the Treasurer General, and that the Governor of the Department did not perform his duty of inspecting the bimonthly and annual cash statements made by the Treasurer General, or else that the governor still more grossly violated his duty by failing to report this abuse of authority on the part of the Treasurer General to the Board of the Treasury or to the supreme government, or by failing to remove the Treasurer General from office for this abuse of authority, or to take steps to annul the grant, or else, like Mr. Reynolds, we must presume *fraud*, in the absence of a single fact to base such presumption upon; and it has been universally held that *fraud*, like its near relative, *crime*, will *never be presumed*, but must be alleged and proven.

This grant was made in the month of April, 1844, and the granting officer recites in the titulo or patent the law of February 10, 1842, and article 73 of the law of April 17, 1837, as his authority for making the *sale* in the manner in which he did. (Record, p. 281.)

LAW OF APRIL 17, 1837, CONTRASTED WITH LAW OF JULY 20, 1831.

The law of April 17, 1837, was undoubtedly a comprehensive plan for the collection and disbursement of all the revenues of the National Government in the Departments. When the Constitution of 1824 was abolished and the Departmental system had, in 1835, been established, the law of October 23, 1835, provided that the governors and other subordinate officers of the States should remain in office, subject in the exercise of their functions to the Supreme Government of the Nation, and article 10 of that law provides that in everything relating to the Department of the Treasury the governor and respective officers should proceed in accordance with the laws, regulations, and orders of each State, in so far as they might be conformable with the new organization of said revenues and until the general Congress should adopt suitable measures for the future.

Section 14 of the law of October 23, 1835, provides that a law shall systematize the public exchequer in all its branches; shall establish the method of accounts; shall organize the tribunal for the revision of accounts, and regulate the economic and contentious jurisdiction in this department.

It is apparent that until the passage of said law of April 17th, 1837, *sales* of land in the Department of Sonora were to be made, if at all, by the said Treasurer General of the State, who had been continued in office by the laws just cited, and the report of Messrs. Flipper and Tipton upon the archives at Hermosillo demonstrates the fact that this was so understood by the officers whose duty it was to execute the laws, and that all grants made during the year 1836 were made by the same officer who had been the Treasurer General of the *State* and whose duty it had been under the *State* laws of 1825 and 1834 to make *sales* of land and *issue titles* thereto.

During the year 1836 this officer styled himself Treasurer General of the *Department of Sonora*.

By the law of April 17, 1837, the Congress of the nation attempted to systematize the public exchequer in all its branches, as was provided for in the basis for the new constitution. As under the law of October 23, 1835, the States had been abolished, and as the State officers were only expressly continued *temporarily* until the plan for conducting the new government could be formulated by Congress, it would naturally follow that as soon as this new plan was formulated all of the said *State* officers ceased to exist officially, as the reason for their continuance was eliminated; and it would also seem that all *National* offices not expressly continued would also cease to exist the moment the plan adopted for the new government provided for other offices and officers to conduct the business which had been carried on by the former offices and officers.

If I am correct in this view, it would also follow that all the laws of the former *State and National* Governments which are not expressly continued in force, and *which related solely to the powers and duties of officers*, would likewise also cease to be in force. *Monroe v. Steinbock, 127 Cal. 70-51; Lee v. Valley, 6 Cal. 17-23*

Counsel for the Government, at page 42 of their brief in case of Santiago Ainsa *et al.* vs. United States, No. 429, October term, 1895, of this court, say:

"It is a rule of construction in all countries governed by the civil law that repeals by implication are favored, and that a subsequent law upon the same subject repeals a former law by implication unless by the terms of the latter law the former is kept in force. Hence the necessity of providing, as does the decree of April 17, 1837, that the regulations of July 20, 1831, should remain in force except where it was repugnant to the terms of the latter."

Article 73 of the law of April 17, 1837, reads as follows, to wit:

"All the purchases and sales that are offered on account of the Treasury and exceed five hundred dollars shall be

made necessarily by the Board of Sales, which, in the capital of each Department, shall be composed of the Superior Chief of the Treasury, the Departmental Treasurer, the First Alcalde, the Attorney General of the Treasury, and the Auditor of the Treasurer, who shall act as Secretary. Its minutes shall be spread on a book which shall be kept for the purpose, and shall be signed by all the members of the Board, and a copy thereof shall be transmitted to the Superior Chief of the Treasury for such purposes as may be necessary and to enable him to make a report to the Supreme Government."

Were it not for the fact that the regulations of July 20, 1831, in so far as they are "not opposed to the decree of April 17, 1837, and subsequent laws," are expressly continued in force, we would have no difficulty in reaching the conclusion at first glance that in the year 1844, under the laws hereinbefore cited, the Superior Chief of the Treasury of the Department of Sonora had full power to make all the purchases and sales on account of the Treasury that do not exceed the sum of \$500 without calling upon the other members of the Board of Sales to assist him in making such purchase or sale.

I contend that it is the plain intention of this law of April 17, 1837, to confer such power upon the *Superior Chief of the Treasury*, and that it consequently existed in the *Treasurer General* at the time this grant was made by virtue of the law of December 16, 1841, which abolished the office of Superior Chief of the Treasury and imposed the duties and powers of that officer upon the Treasurer General.

In the law of July 20, 1831, there is a particular provision which was held by the Court of Private Land Claims to be still in force and to prevent the Treasurer General of the Department from acting *alone* in making a *sale* or *purchase* on account of the Treasury when the amount of the purchase or sale did *not* exceed the sum of \$500.

The article, No. 126, reads as follows, to wit:

"All purchases, sales, and contracts made on account of the Treasury, whatever be their purpose, shall be made by the Commissaries General, sitting as Boards of Sale, but before convoking them it shall be absolutely necessary to receive first the order therefor, either from the Supreme Government, communicated directly or through the Treasurer General, or rather from the Directory of Revenues, when it relates to matters subject thereto."

Also Article 127 :

"Said board shall hold its sessions in the room most suitable for the purpose in the Commissariats, or in the public place nearest to those offices, and the regular members shall be the *Commissary* or *Subcommissary*, who shall preside, the *Senior Officer of the Treasury*, or the one who acts in his stead, and the *Attorney General*, where there is one, and each of these employes shall take the place or seat to which he is entitled in the order in which they are named."

It will be noticed that Article 73 of the law of April 17, 1837, provides that the sales and purchases *exceeding five hundred dollars* shall be made *necessarily* by "the" Board of Sales. It then goes on to provide that "the" Board of Sales shall be composed of certain officers. Had the law provided that "a" Board of Sales should make all such purchases and sales and should be composed of those officers, there would be more excuse for holding that in adopting this comprehensive measure to systematize the public exchequer in all its branches the Congress of the nation had intended that there should be *two* Boards of Sale, *possessing exactly the same name* as a designation of their offices, and only to be distinguished from each other by some such nickname as the "little" Board of Sales and the "big" Board of Sales.

It is difficult for me to understand, however, by what process of reasoning the conclusion could have been reached that, after the Federal Government had been abolished and an entirely new and distinct government had been established in its place, and a complete system had been adopted

by that new government to systematize every branch of the public exchequer, the fact that those parts of the regulations of July 20, 1831, were continued in force which are not opposed to the decree of April 17, 1837, can be construed as including the *Board of Sales* provided for in those regulations of 1831; and especially is such a construction difficult to understand in view of the fact that this very law of April 17, 1837, abolishes the office of Commissary General and imposes all the functions of that office upon the presiding officer of this *new Board of Sales*, to wit, the *Superior Chief of the Treasury*, or, as has already appeared, his successor, the *Treasurer General of the Department*—the officer who made this sale.

Regulation 126 did not create a Board of Sales as such for any specific purpose, but simply provided that the Commissary General when making purchases, sales, and contracts on account of the Treasury should call to his aid certain other officers, to wit, the *Attorney General of the Treasury*, if there was one, and the *Senior Officer of the Treasury*.

By the law of 1837 the office of *Commissary General* was abolished, and the "Senior Officer of the Treasury," to wit, the *Superior Chief of the Treasury*, is himself invested with the powers and duties of said *Commissary General*, as well as with many other new and important duties.

Section 4 of the act of April 17, 1837, provides that all the employés of the treasury shall be subordinate to the *Superior Chief of the same*. He is, therefore, undoubtedly the "Senior Officer of the Treasury." Hence if the Board of Sales provided for in the law of July 20, 1831, is to be convoked, it will no longer be composed of more than two members, to wit, the *Superior Chief of the Treasury*, or, at the date of this grant, his successor, the *Treasurer General*, and the *Attorney General of the Treasury*. But by the law of July 20, 1831, all matters before this Board were to be determined by an absolute majority vote, and the *Attorney General*

of the Treasury was to constitute a member of said Board of Sales only "*where there was one.*" It must follow, therefore, that if there is no Attorney General *at the time located in the place where the Treasurer General was about to act in making any purchase or sale* on account of the Treasury, the *Treasurer General will at once become a corporation sole and will himself constitute the Board of Sales.*

This would seem to me to lead to absurd results, if we are to adopt the view taken by the Court of Private Land Claims on this question. It seems plain to my mind that there was a good and substantial reason for requiring that all sales and purchases made on account of the treasury by the *Commissary General* should be made by him in the presence of and with the approval of certain other officers. During the time of the Federation, the duties of the Commissary General were very limited as compared with those of the Superior Chief of the Treasury and of the Treasurer General under the Departmental system. In the first place it does not appear by any evidence before this court that after the year 1826 the Commissary General ever exercised the power of selling vacant public lands, the performance of which duty by the Treasurer General necessarily imposed more labor than any other duty he was required to perform; and it quite conclusively appears from the report of Messrs. Flipper and Tipton, above referred to, that the Commissary General did not exercise the power of making grants of lands between the years 1826 and 1837, the date of this law, whether he actually possessed such power as a matter of law or not. The sales and purchases of other things which the Commissary General was required to make must necessarily have been exceedingly limited as compared with those it became the duty of the Superior Chief of the Treasury or Treasurer General to make under the Departmental system. Hence it may have been quite easy, from a practical standpoint, for the Commissary General to have convoked a Board of Sales every time it was necessary for him to make a purchase on

account of the treasury or to make a sale of property, regardless of the question as to whether the purchase was that of a box of pens costing fifty cents or the sale was that of an old desk worth two or three dollars. But what might have been a hardship in the case of the Commissary General, in the exaggerated instances used as an illustration, would become an absolute embargo upon the expeditious conduct of affairs if enforced in the office of the Superior Chief of the Treasury or of the Departmental Treasurer under the new system of government. It seems to me plainly apparent that it was the intention of Congress to intrust the making of all sales and purchases, where the amount did not exceed the sum of \$500, to that National Officer, who was made by this law of 1837 the Senior Officer of the Treasury, with the duty of holding meetings of the Board of the Treasury at least twice a month, and of exercising his talents by and through that board "to procure the prosperity and increase of the revenues of the treasury, the most easy and prompt collection thereof, to promote the economies that should be made, and to make a report to the Board of bad management or failure to comply with their duties, and other omissions on the part of the employés of the Treasury Department which might come to his knowledge." Minutes were required to be kept of the doings of this board, and in all matters where the amount involved exceeded five hundred dollars the Government thus had the complete record, whereas in those purchases and sales, constituting vastly more numerous transactions, in which it was necessary to have prompt action, the Government could safely rely upon the accounts which were required to be kept by the *subordinates* of the Superior Chiefs of the Treasury, and especially when the Governor of the Department, who was himself necessarily appointed by the Chief Executive of the Nation, was vested with power and was required as a matter of duty to inspect these accounts every month, and when the Commandant

General of the army was likewise authorized to inspect said accounts at any time.

And we should not lose sight of the fact that from 1825 to 1835 the Treasurer General possessed and exercised the power of making *all sales of land alone* under the State laws.

But there is still another circumstance which makes it plain to my mind that the Board of Sales provided for under the law of July 20, 1831, was intended to be abolished by the law of April 17, 1837. Said Article 126 of the Law of July 20, 1831, further provides that before convoking the Board of Sales "it shall be absolutely necessary to receive first the *order* therefor either from the Supreme Government, communicated *directly*, or through the Treasurer General, or rather through the Directory of Revenues when it related to matters subject thereto."

And section 133 of said law of July 20, 1831, provided that—

"After the legal term has expired the Commissaries and Subcommissaries shall forward the proceedings with their report thereon to the Supreme Government, *without whose approval* the purchase, sale, or contract shall not be carried into effect."

Is it reasonable to suppose that in all cases where a sale or purchase was to be made on account of the treasury, which *would not exceed* the sum of \$500 in amount, and which *might not exceed* the trifling sum of one dollar, Congress intended that the Superior Chief of the Treasury could take no action without first receiving from the Supreme Government an *order* to convoke the Board of Sales for the purpose of having it make such purchase or sale; whereas if the amount *did exceed* five hundred dollars, said Superior Chief of the Treasury could convoke the Board of Sales *upon his own motion* and *without any previous order*, and said board could proceed to make *such* purchase or sale, and *thus expend*

an unlimited sum of money, or thus dispose of any property owned by the Government, however valuable? Or, is it reasonable to suppose that when the amount of said purchase or sale *did not exceed* five hundred dollars and was, perhaps, trifling and insignificant, the purchase, sale, or contract should *not* be carried into effect *without the approval of the Supreme Government*; whereas, if the amount *did exceed five hundred dollars*, however large it might be, *the approval of the Supreme Government was not necessary?* For said law of April 17, 1837, does not even require that a report upon sales or purchases made by said Board of Sales provided for in that act must necessarily be made to the Supreme Government, and the only report necessary, as provided by that act, was to the Governor of the Department, who was himself the presiding officer of the Board of Sales under the amendments to the law of 1837, which were passed prior to the sale of this grant.

Or is it reasonable to suppose that the *order* must be communicated *directly* to the Treasurer General of the Department if the sale or purchase is for *less* than five hundred dollars, and that the Governor of the Department must be the *sole* avenue of communication when the sale or purchase is for a greater amount than five hundred dollars?

Some of the provisions of said law of July 20, 1831, are clearly *not opposed* to the provisions of the decree of April 17, 1837, or any subsequent laws on that subject, and *those* provisions of said law of 1831 are eminently proper ones to have been continued in force and seem to have been recognized as in force by the granting officers, and are undoubtedly the ones referred to in said law of 1837 as being continued in force in so far as they are not opposed to it.

For instance, the provisions of Article 130 of said law of 1831 were complied with by the Treasurer General of the Department in making this grant, as is shown in the recital already quoted therefrom, to wit, by having two witnesses at the sale on account of the absence of a notary public.

Article 134 of said law is clearly not opposed to said decree or any subsequent law, and is just as clearly one which it was eminently proper to continue in force, for it is intended to prevent any officer who takes part in a sale or purchase from buying from himself or selling to himself.

As applied to the sale of lands, the Congress of Mexico had a precedent for this rule providing that *when a sale exceeded in value a certain amount* additional safeguards should be thrown around the sale, for as early as March 23, 1798, it was provided by the Royal Cedula that when the purchase price of land sold by the intendente did not exceed two hundred dollars the transmittal of the title to the Superior Board of the Treasury for confirmation should be dispensed with, although the confirmation by said Board was absolutely necessary to the validity of a title to land *when the purchase price did exceed said sum of two hundred dollars.* (See Reynolds, page 29.)

In order to expedite the transaction of business, provisions of a similar character are very common under all the municipal governments of the United States; and we find similar provisions in many State laws.

For instance, when an officer or a board is authorized to purchase supplies and let contracts for any municipal government, it is usually provided that in all cases where the amount of the purchase or contract exceeds a certain sum, like five hundred dollars, the contract or purchase shall be made by advertising for sealed bids and opening the same at a certain time and place; whereas in all purchases and contracts involving a less sum of money the officer or board is authorized to act without these safeguards against collusion in the purchase or contract or against fraud on the part of the officer. But, besides the presumption that any grant or concession made by that officer who is by law authorized to make it carries with it *prima facie* evidence that it is within his power, and while, in my opinion, the burden is upon the Government in this case to show that the granting offi-

cer violated the law in making the grant, we have the additional effect of the weight which must be given to the fact that the officer whose duty it was to act under the law of April 17, 1837, in making this grant gave it the interpretation which we contend is correct.

INTERPRETATION PLACED UPON THE LAW BY OFFICER WHOSE DUTY IT IS TO ACT UNDER IT RAISES A STRONG, IF NOT A CONCLUSIVE, PRESUMPTION IN FAVOR OF HIS AUTHORITY TO ACT.

In the case of *Edwards vs. Darby*, 12 Wheaton, 206, this court said :

"It is urged that the commissioners appointed by the act of 1782 were not authorized to cause surveys to be made of the reservation of 640 acres around the reserved salt licks and springs; that the reservation was by quantity only, and that no legal effect can therefore be attributed to the survey. We admit the statute does not give the authority to survey the reservation in express terms, but we do not admit that the authority may not come and does not result by necessary implication from the duties that they were expressly required to perform and from the general provisions of the statute."

"In the construction of a doubtful or ambiguous law the contemporaneous construction of those who were called upon to act under the law and were appointed to carry its provisions into effect is entitled to great respect."

And in the case of the *United States vs. Moore*, 95 U. S., 760, this court said :

"The construction given to a statute by those charged with the duty of executing it * * * should not be overruled without cogent reasons. * * * The officers concerned are usually able men and masters of the subject. Not infrequently they are the draughtsmen of the laws they are afterwards called upon to interpret."

And in the case of *U. S. vs. Pugh*, 99 U. S., 265, this court said :

"While, therefore, the question (the construction of the abandoned and captured property act) is one by no means free from doubt, we are not inclined to interfere at this late day with a rule which has been acted upon by the Court of Claims and the Executive for so long a time."

And in the case of *Hornsby vs. U. S.*, 10 Wall., 224, this court said :

"We cannot without doing injustice to individuals give to the Mexican laws a more narrow and strict construction than that received from the Mexican authorities who were entrusted with their execution."

These principles of law have been frequently recognized and reasserted by this court. But the interpretation placed upon these laws by the officer whose duty it was to act under them in this case derives much additional strength and becomes, if possible, still more conclusive presumption in favor of his power from the fact that in Mexico there are not only no published reports of judicial decisions which show the received or proper construction of any of its State laws, but the courts of that nation had no power to interpret a law, and its proper construction and interpretation therefore necessarily devolved upon the executive officers whose duty it was to act under them.

THE POWER TO REFORM OR ANNUL TITLES WAS VESTED IN THE POLITICAL AND NOT IN THE JUDICIAL DEPARTMENT IN MEXICO.

"Under our system of government," as this court said in the case of *Stone vs. U. S.*, 2 Wall., 525, "one officer of the Land Office is not competent to cancel or annul the act of his predecessor. That is a *judicial* act, and *requires the judgment of a court.*"

In Mexico, however, the law is directly to the contrary.

This court said in the case of *White vs. Burnley*, 20 How., at page 247 :

"Under Spanish and Mexican governments the judiciary had no authority to interfere in any case. The political power retained to itself all the power to reform or annul titles."

The constitution of Sonora and Sinaloa, comprising the State of the West, contains the following provisions, to wit :

"The tribunals and courts of justice, being authorized solely for applying the laws, shall never interpret the same or suspend their execution."

On pages 83, 84, 85, 86, and 97 of the printed official report on the condition of the archives or records of the titles of land grants in Arizona, which were made by Messrs. Flipper and Tipton, special agents of the Department of Justice, we find a letter from José Maria Mendoza, as Superior Chief of the Treasury of the Department of Sonora, to the Secretary of State of the Republic, which contains, among other things, the following statement, to wit :

"My predecessor, Ygnacio Trealles, came to believe that said authorities and the Treasurer (the Superior Chief of the Treasury and the Treasurer General and other members of the Board of the Treasury) exercised judicial functions under those decrees."

Mendoza was here referring to the laws under which the Treasury Department of Sonora was making grants of land, and he was requesting the Secretary of State of the Department of the Treasury of the Republic to advise him as to how he should proceed in doubtful cases, and as to who should decide upon the proper construction to be given to the laws in relation to grants of land whenever he, as Superior Chief of the Treasury of said Department of Sonora, should be in doubt.

The reply of the Secretary of State is published on page

88 of said report of Messrs. Flipper and Tipton, and it instructs said Mendoza, as Superior Chief of the Treasury, to *refer all doubtful questions to the Board of the Treasury for decisions, and to be guided by its decisions.*

Hence if there is any doubt about the proper construction to be given to these two laws of 1831 and 1837 in order to determine the question as to whether the granting officer in this case had the power to make the sale of the land in the manner in which he did, that doubt must be resolved in favor of the interpretation which was placed upon the laws by the officer whose duty it was to act under them, to wit, by the Treasurer General, who was the granting officer in this case, not alone by reason of the fact that *his contemporaneous construction would be entitled to great respect, looking at him simply as an executive officer*, under our system of government, where doubtful laws are construed and interpreted by the courts; not for the additional weighty reason that *in Mexico* the court being restrained from interpreting or construing laws and the executive officer being necessarily required to interpret all laws under which it is his duty to act, it must follow that *the interpretation placed by him upon any such law is in effect a judicial decision upon its proper construction*, at least until said officer's interpretation is overturned by the decision of a higher executive officer or by a legislative enactment differently construing said law.

In this case it has been seen that the interpretation and construction placed upon said laws by said Treasurer General in making this grant must be presumed to have come under the inspection of the governor, who was the Chief Executive Officer of the Department, as well as under the inspection of said Board of the Treasury, whose duty it was under said instruction from the Secretary of State to decide such questions. In the absence of a showing to the contrary, if there is any doubt about the power which was exercised by said Treasurer General, the presumption that every officer

performs his duty must lead us to the conclusion and to the presumption that said Board of the Treasury passed upon the question of the proper interpretation and construction of said laws, and that said Treasurer General acted in accordance with its said decision.

NATIONAL GOVERNMENT OF MEXICO ACQUIESCED IN SALE AS
MADE.

As was said by this court in the case of *Gonzales vs. Ross*, 120 U. S., 616:

"Besides, the commissary was a public officer having an important duty to perform, and, in the absence of evidence to the contrary, *the presumption would be that he acted in accordance with the law as known at the time.*"

And again, as said by this court, at page 619, in said case:

"A strong circumstance in favor of this conclusion is the fact that Soto's official acts as committed in this case were never repudiated by the Government; but, on the contrary, his protocol was received and deposited in the public archives, where it still remains. His official acts, accepted and acquiesced in by the governor, must be considered as valid, even if done by him only as a commissioner *de facto*."

And again, at page 622:

"All favorable presumptions will be made against the forfeiture of a grant. As before said, it will be presumed, unless the contrary be shown, that a public officer acted in accordance with the law and his instructions. The Government accepted Soto's acts, and it does not appear that any attempt was ever made to revoke or annul the proceedings or to obtain a forfeiture for the cause now insisted upon.
* * * On the whole, we think it clear that Fortunato Soto had authority to extend the title in question, or at least that his official acts were acts acquiesced in by the Government, and are to be considered as valid."

As was said by the Supreme Court of Texas in the case *Hanrick vs. Jackson*, 55 Texas, 17, and quoted by this court with approval:

"The presumption which is always indulged in favor of the validity of the acts of officers of a former government warrants the conclusion that the officer acted in conformity with law and not in violation of it."

So in this case the expediente was deposited in the public archives and remained there at least until after the date upon which this Government acquired the territory within which this land lies, to wit, for a period of about ten years, during which the Government of Mexico must be presumed to have acquiesced in the action of said Treasurer General in making said sale in the manner in which he did. Not only did said expediente remain in the archives, but the National Government of Mexico received and retained the \$500 which was paid by the purchaser of this grant for the land, and the accounts of its public officer must be presumed to have shown the source from which said money was received.

Not only is this true, but it is impossible to conceive how it was possible for thirty notices of sale to have been made and for the notices of the three public auctions to have likewise been made without the Chief Executive Officer of the Department having received notice of the act of the Treasurer General in this matter. And if article 131 of said law of July 20, 1831, was still in force, it must be presumed that the notice of sale was published at least eight days before the sale, by placards put up in the most public and frequented places, and that it was also published by a notice inserted for the same length of time in the newspaper of greatest circulation in the place at which the sale took place, provided there was a newspaper in said place.

It is not possible that the General Government of Mexico was ignorant of this grant. For ten years prior to the treaty

it remained of record in Mexico, and for at least three years prior to the treaty the *cestui que trust* of the original grantee was in open and notorious possession of the grant; and as was said by this court in the case of *United States vs. Castro et al.*, 24 Howard, 350:

"The survey and possession of a grant are open and public acts and would support the parol evidence of its prior existence and destruction. It would show the knowledge of the officers of the Government of the title claimed and their acquiescence in the justice and legality of the claim."

Will a court of equity at this late day, after the lapse of nearly half a century, during which time the grantee has been in open and notorious possession of the land, and has expended vast sums of money in improving the same, and in defending his possession against the attacks of the savage Apaches, *so construe a doubtful law* (to put the case most strongly for the Government) *as to overturn the contemporaneous interpretation which was placed upon it by the officer whose duty it was to act under it*, and thus cause a forfeiture of land which was purchased by the grantee in good faith for a valuable consideration? I cannot believe it possible.

IF ARTICLE 126 OF LAW OF JULY 20, 1831, IS STILL IN FORCE THE TREASURER GENERAL WAS NEVERTHELESS AUTHORIZED TO MAKE THIS SALE ALONE.

If it be held, however, that said Board of Sales created under the law of July 20, 1831, was still in existence, I insist that under said law said Board was necessarily composed only of the Treasurer General of the Department and the Attorney General of the Treasury at the time this sale was made. I further insist that *if there was no Attorney General of the Treasury at the place where the sale was made*, then the Treasurer General was authorized to proceed alone in making the sale.

It must be presumed that the Treasurer General performed his duty; and if no Attorney General was present at the sale, *it must be presumed that it was because there was none at that place.* But, fortunately, we are not compelled to depend entirely upon presumptions upon this question, for we have absolute record evidence of the fact that on February 23, 1839, there was no Attorney General in the Department of Sonora, and likewise that there was no notary public there.

Article 130 of said law of July 20, 1831, reads as follows, to wit:

"If there is a notary public *in the place*, he shall necessarily be present at the sessions of said board, and whatever is done therein shall be certified to by him or by two attending witnesses, in case there is none."

It is a significant fact that the title paper in this case contains the following recital, to wit:

"I, the undersigned, Departmental Treasurer, being in the office of this treasury under my charge, with my attending witnesses, Don José Maria Mendoza and Don Vicente Irigoyen, in the absence of a notary public, in compliance with the provisions of article 73 of the law of April 17, 1837," etc.

Hence we see that the granting officer complied with the requirements of article 130 of said law of July 20, 1831.

We should also notice and bear the fact in mind that José Maria Mendoza, who preceded this granting officer as the Superior Chief of the Treasury, was one of the assisting witnesses at this sale. (Record, p. 282.)

Said José Maria Mendoza was the Treasurer General of the Department of Sonora at the time the decree of February 10, 1842, was published, and he succeeded this granting officer as the Treasurer General of Sonora early in the year 1845, less than one year after this grant was made, as is shown by said report of Messrs. Flipper and Tipton.

The long career of said Mendoza as the Senior Officer of the Treasury of both the State of Sonora and the Depart-

ment of Sonora, and the care displayed by him in securing advice from the Supreme Government before proceeding to perform any important official act, lends additional weight to the correctness of the interpretation which was placed upon these laws of April 17, 1837, and February 10, 1842, by the granting officer in this case.

The letter of said Mendoza, as Superior Chief of the Treasury of the Department of Sonora, to the Secretary of State and of the Department of the Treasury at Mexico, was dated February 23, 1839, and the reply thereto by the Secretary of State and of the National Treasury Department was dated December 21, 1840. If there was any doubt, therefore, about the power of the Treasurer General to make this sale *alone* under said law of April 17, 1837, it is fair to presume that said Mendoza would have warned Lopez, the granting officer in this case, of that fact; and it is also fair to presume that when said Mendoza again became the Treasurer General of the Department at Sonora, in the year 1845, he would at least have called the attention of the Supreme Government to the doubtful validity of the title to this grant through the proper officer of the Supreme Government.

The letter of said Mendoza just referred to contains evidence of the fact that there was no Attorney General at Ures, the capital of the Department of Sonora, at the time said letter was written, in the year 1839. It contains the following statement, to wit:

"At the present time I consider the office of Superior Chief of the Treasury, which I hold as isolated in such cases, in my opinion. It has no legal adviser to counsel in the different branches and business under its charge, and particularly in that of lands, which is serious and important and which many times undoubtedly require it in order to avoid a conflict between the fact and the law and in order to act without delay with the precision and certainty possible. *Likewise it has no attorney nor notary public because there are none.* And finally this office also lacks the Treasury Board referred to in Art. 74 of the supreme decree of April 17, 1837,

for the reasons I mentioned to you in official letter No. 6 of this date."

When a certain condition of affairs has been shown to exist, the same condition must be presumed to continue until the contrary has been shown to be the fact. The affirmative evidence contained in the letter of Mendoza, that there was no such officer in that department in 1839, and that there was no notary public at that time, coupled with the further affirmative evidence contained in the recital just quoted from the title papers in this grant, that there was no notary public at Guaymas, the place of sale, in 1844, together with the presumption that an officer has done his duty, and that therefore the Treasurer General would have called the Attorney General to his aid in making said sale if he was required by law so to do, and, *if there was one at that place*, establish to my mind the fact that there was no Attorney General at Guaymas at the time of said sale, and therefore establishes the power of the Treasurer General to make the sale alone, as he did, even if the Board of Sales provided for in the law of July 20, 1831, was still in existence at the time of said sale.

DECREE OF FEBRUARY 10, 1842.

Article 1 of this law provides that—

"The Boards of Sale in the several departments will proceed to sell, at public auction, to the highest bidder, the properties (finchas) situated therein that pertain to the Department of Temporalities."

But it is contended on the part of the Government, and was held in the Court of Private Land Claims, that even if the Treasurer General of the Department of Sonora, who made this grant, did possess the power to make sales of vacant public lands when the value of the same did not exceed the sum of five hundred dollars, without requiring the

other members of the Board of Sales to act with him, he did not have power to make a sale of a *temporality*, for the reason that the decree of February 10, 1842, expressly confers the power to make sales of temporalities upon the Board of Sales only.

It seems to me that the Court of Private Land Claims was led into this error by a failure to carefully examine said decree of February 10, 1842, and the recital in reference to the same which is contained in the title papers of this grant. That decree was not the enactment of a law by the Congress of the Republic, but was merely an *executive order* from the President of the Republic.

It does not purport to be a *grant of power* to the Board of Sales to sell temporalities, but is in terms simply a *direction* and a *demand* that they shall *proceed* to make such sales, at public auction, to the highest bidder, after first appraising the same in a certain manner.

In the original decree as found in the Compiled Laws of Mexico, vol. IV, page 114, No. 2282, we find the following language, which does not appear in the translation given by Mr. Reynolds, to wit:

"Therefore I order this to be printed, published, and circulated, and *demand* that it be complied with."

This order was not accompanied or followed by any regulations, and hence the regulations of April 17, 1837, which were still in force, were properly followed in making the sale. It will be seen by the recitals in the title papers that this sale was made at public auction, to the highest bidder, after the grant had first been appraised by the Treasurer General's office in the proper manner.

Other Presidential orders for the sale of temporalities had previously been made. The law of May 10, 1829 (Compiled Laws of Mexico, vol. 2, page 108), is a Presidential order to the Commissary Generals. It ordered and directed them to sell temporalities at auction because they are becoming

deteriorated by being rented, and requires said Commissary Generals to make reports of the condition of all temporalities within their jurisdiction. This order demonstrates the fact that the Commissary General had been renting and leasing the public property of the nation by virtue of the laws of September 21, 1824; and yet it would be difficult to point out any particular section of that law which *expressly* grants to him any such power, if we are *always* to be required to find *express* language making such a grant of power, as is suggested in the opinion of the Court of Private Land Claims in this case.

The law of May 21, 1831 (Compiled Laws of Mexico, vol. II, page 329), provides that there shall be the office of Commissary General in the State of Sonora. The first duty imposed upon the Commissary General by this law is that of collecting money belonging to the Federation, in compliance with orders emanating from the general Treasury, including the power to make grants of land, which are continued in force, except as to the collection of revenues from tobacco and powder. Hence the Commissary General of the State of Sonora had power and authority to sell temporalities at auction, and said Presidential order of May 10, 1829, directing all Commissary Generals to do so was still in force, as the same had never been revoked, and was not opposed to any subsequent law on the same subject.

Article 10 of the circular of July 7, 1831 (Compiled Laws of Mexico, vol. II, page 341), provides that the Treasury Department shall take an exact account of the number, location, condition, and present method of administering all the property of the nation, in which is included those of the *temporalities*, and provided that said department shall see to the collection of the proceeds from said property, and that it shall do whatever it conceives to be most efficacious in regard to the *sale*, lease, or administration that may be advisable, in whole or in part, of the property in question.

Hence it will be seen by this order that the Commissary

General of Sonora was directed to do whatever he considers most beneficial in regard to the *sale of temporalities*, and said order of May 10, 1829, to sell temporalities at auction was still in force and was in no way opposed to this later order.

These orders were never revoked nor repealed up to the date of the passage of the law of April 17, 1837, which abolished the office of Commissary General and imposed the functions and powers of that office upon the Superior Chief of the Treasury of the Department of Sonora.

Hence it will be seen that the Superior Chief of the Treasury of the Department of Sonora already possessed power to sell temporalities at public auction under the orders just cited, which had not been revoked.

By the decree of December 16, 1841, the office of Superior Chief of the Treasury, which was created by said decree of April 17, 1837, was abolished and the Departmental Treasurer was vested with the powers and authority previously exercised by said Superior Chief of the Treasury. Hence it follows that at the date of said decree of February 10, 1842, the Treasurer General of the Department of Sonora, who made this grant, possessed the power to sell temporalities at public auction under said orders of May 10, 1829, and July 7, 1831, and if the value of said temporalities did not exceed the sum of five hundred dollars said Treasurer General had the power to sell the same without convoking the Board of Sales, as we have just seen.

Hence when the well-known embarrassed condition of the national Treasury compelled Santa Ana to not only direct, but to *demand*, that the Boards of Sale in the several departments should proceed to sell the temporalities situated therein, it became the duty of the *chief officer* of the Treasury in each department to proceed to carry out the spirit of this *order and demand* of the supreme executive, and to have all temporalities within his jurisdiction immediately appraised in the manner set forth in said decree; and upon said appraisal being completed, it became his duty to

convoke the Board of Sales and to require it to immediately proceed to sell all those temporalities the appraised value of which exceeded \$500; and it was likewise his duty, within the *spirit* of said order, to immediately proceed to personally sell all those temporalities whose appraised value did not exceed said sum of \$500 without convoking said Board of Sales.

But it must also be borne in mind that the Governor in each department was by article 14 of the decree of June 13, 1843, made the only necessary conduct of communication with the Supreme Government.

And by subdivision 10 of Article 142 of said law the Governor was made the chief of the public Treasury of the department, with general supervision of the same.

By Article 140 of said law it was the duty of the Governor to publish the decrees of the President, and to cause them to be complied with within the territory in which he exercised his powers; and under the laws just quoted and the holding of this court in *White vs. Burnley*, cited *supra* it was also the duty of said Governor to *interpret*, as well as to cause the execution of all decrees, orders, and laws.

And under Article 1 of the law of December 7, 1837, it was made the duty of the Governor to preside over the Board of Sales and the Board of the Treasury, and under Article 75 of the law of April 17, 1837, it was made the duty of the Board of the Treasury "to procure the prosperity and increase of the revenues of the Treasury, the most easy and prompt collection thereof, to promote the economies that should be made, to expedite such grave matters of difficult solution as the Superior Chief, and afterwards his successor, the Treasurer General," etc.

It must also be remembered that in all cases of doubtful construction of laws, orders, and decrees in regard to the sale of lands the Treasurer General had been instructed by said letter of the Secretary of State and of the Treasury Department of the Republic to said Mendoza to submit such

matters for decision to said Board of the Treasury and to be guided by its decisions.

It will be noticed that the sale of these temporalities did not take place until more than two years after the appearance of said decree of February 10, 1842. It will also be noticed that in reciting his authority for making the grant the Treasurer General does not state that he makes the sale by virtue of a power or authority *vested* in him by said decree of February 10, 1842, but simply recites that—

“Whereas said decree provided for the sales, on account of the critical condition of the public Treasury, of the properties pertaining to the department of temporalities, to which class is this grant, said grant being valued at the sum of \$500, as provided in Article 2 of the aforesaid supreme decree of February 10, 1842, and complying punctually therewith, I have ordered the formation of the corresponding expedientes in the court of the first instance and of the Treasury of the district of San Ygnacio, during which no bidder appeared:

“Therefore, and in compliance with Article 73 of the law of April 17, 1837, as the sale in question on account of the national Treasury does not exceed \$500, this said Treasury proceeded with the public sale of the aforementioned lands,” etc.

The granting officer plainly states that in making the sale he has complied with Article 73 of the law of April 17, 1837, and has made the sale without convoking the Board of Sales for that purpose, *because the value of the land does not exceed \$500*; and he likewise plainly states that the sale is made because said decree of February 10, 1842, provides for the sale of temporalities on account of the critical condition of the public Treasury. If the contention on the part of the government, that there were two Boards of Sale still in existence in 1844, is correct, then it necessarily follows that said decree of February 10, 1842, if it is to be construed as a grant of power to make the sale, applies as well to the “little” Board as to the “big” Board, and hence it has been

seen that the Treasurer General was thereby authorized to make this sale alone, in the absence of an Attorney General from the place of sale.

But in view of the history of the times, and in view of the wording of said order or decree, and in view of the fact that the Governor is the only source of communication with the supreme government and was the Chief of the Treasury of the Department and was the presiding officer of said Board of the Treasury, whose duty it was to promote and expedite the collection of the revenues, it seems to me that if any order was necessary to enable the Treasurer General to act alone in selling temporalities where the value did not exceed the sum of \$500, it must be presumed in favor of the validity of his acts; that such order was received from the proper source by the Governor and was communicated to the Treasurer General by him; or, if a doubt existed at the time as to his power to make the sale in question, it must be presumed that this question was submitted to the Board of the Treasury for its consideration and determination, and that said Treasurer General acted in making said sale in accordance with the decision of said body.

Again, we should bear in mind the fact that said Mendoza was the Treasurer General at the time said decree of February 10, 1842, was published, and he had been instructed by the Secretary of State and of the Treasury Department to submit all doubtful questions to said Board of the Treasury for decision and he was one of the assisting witnesses at this sale and was doubtless a subordinate in the Treasurer General's office, perhaps chief clerk at this time, and by reason of his vast experience in such matters would doubtless have been consulted by Lopez, the granting officer, about the proper procedure in making the sale.

All that has heretofore been said in this brief in relation to the presumptions which must be indulged in favor of the validity of the acts of an officer and in favor of the contemporaneous interpretation placed thereon by him whose duty

it is to act under these laws applies with equal strength to this phase of the question.

Taking a practical view of the situation, it is apparent from the history of the sale of temporalities, as shown in the orders and decrees of the Supreme Government, which are hereinbefore cited, that the officers whose duty it was to sell the same did not proceed with alacrity to execute those orders. This may have been due to the influence of the clergy, who were in possession of the temporalities, or to other causes unknown to us. Hence when Santa Anna, owing to the embarrassed condition of the Treasury, made a demand that the Board of Sales in the different departments should proceed to sell the temporalities in said departments, it was the strongest evidence of his fidelity to the interests of the National Government, if the Governor of the Department caused the Treasurer General, in compliance with the spirit of said order of Santa Anna, to proceed himself to sell all temporalities the value of which did not exceed the sum of \$500, and with the sale of which for that reason the Board of Sales in the several departments were not entrusted by the existing laws.

It cannot be doubted that the ample power given to the Governor and to the Board of the Treasury to procure the prosperity of the department and to increase its revenues and to promote the most easy and prompt collection of the revenues thereof fully authorized said Governor or said Board of the Treasury to require the Treasurer General to make such sales of temporalities in accordance with the spirit of said decree, if he did not already possess the power under existing laws.

The price which was obtained for said temporality by said sale was fair and adequate, and was fully equal to the minimum value which would have been placed upon said land if sold as vacant public lands. It has not been shown that any advantage could have accrued to the purchaser by reason of the manner in which the sale was made, and it is not rea-

sonable to suppose that Santa Anna had any fault to find with the fact that the sale was made by the Treasurer General of the Department instead of by the Board of Sales, if as a matter of fact said Treasurer General did have the power to make sales of vacant public lands under existing laws when the value of the same did not exceed the sum of \$500.

The insistent language used by Santa Anna in said decree of February 10, 1842, shows that his sole object was to secure revenues for the Treasury Department. It cannot be doubted, therefore, that the action of the Treasurer General in making the sale was in accordance with the spirit, if not within the express letter, of said decree of February 10, 1842, even if we do not acknowledge the existence of the presumption that if an order was necessary to authorize him to make the sale, such order was made by Santa Anna and received by the Governor and communicated to the Treasurer General.

We have put in evidence a title paper or patent duly executed by the proper officer possessing the political power to issue the same, and the burden is upon the Government in this case to overcome the presumptions in favor of the validity of his acts. If the archives of Mexico do not contain any order or direction from the proper officer of the Supreme Government to the Governor or the Treasurer General of the Department of Sonora to make this sale and authorizing the Treasurer General to make it in the manner in which he did, the Government ought to show this fact affirmatively.

Said report of Special Agents Flipper and Tipton, at page 5 thereof, contains the following statement, to wit:

"We made inquiries as to correspondence between the State or Departmental authorities and the National authorities and were informed that if any such correspondence existed, which was doubtful, it would be found in the archives of the Secretary of State, but that those archives

were very voluminous, unarranged, and in the greatest disorder, and confusion, and we found that with the work we already had in hand and the unexpected delay to which we had been subjected it was impossible for us to examine them in the time at our disposal."

This grant, as claimed by us, contains a little less than 17 sitios, or a total of 73,246 acres. By the law of the State of Sonora of July 11, 1834, which was enforced at the date of this sale, in appraising the value of *vacant public lands* the price for each dry sitio was fixed at fifteen dollars, and for each sitio where water could be obtained in wells, and which had pasture, timber, etc., the price was fixed at forty dollars; and without these circumstances, at thirty-five dollars; and for each sitio that had a spring or river and was arid or broken, the price was fixed at sixty dollars; and for each sitio that contained *irrigable lands and is very fertile*, the price was fixed at eighty dollars.

If we concede that this grant contains two sitios which could be valued at eighty dollars each, and two sitios which could be valued at sixty dollars each, and one sitio which should be valued at forty dollars, and twelve sitios which should be valued at fifteen dollars each, we would have a total of seventeen sitios and a total valuation of five hundred dollars; but there are not quite seventeen sitios in the grant, and it does not contain any land which is "very fertile," and it contains at least fourteen sitios which are arid hills, containing very little pasture and being exceedingly dry.

Hence, I repeat, that if the land had been sold as vacant public lands, instead of as a temporality, its appraised value would not have exceeded the sum of five hundred dollars, and the Treasurer General of Sonora possessed the power to make such sale alone; and hence, if he did not possess the power to sell a temporality alone, the government was in no way injured by his mistake, as the sale was made at public auction, after due public notice, and therefore it ought

not to be disturbed at this late day, after the land has passed into the hands of *bona fide* purchasers for a valuable consideration.

The government of Mexico received and has retained the full value of the land as a consideration for the grant, and I cannot refrain from again pausing to ask, Will the highest Court of Equity in this land construe a law, under such circumstances, in opposition to the contemporaneous interpretation which was placed thereon by the officer whose duty it was to act under the same, and thus hold that a contract is void which does not come within the express letter of the law, although it falls within its spirit?

"Equity abhors a forfeiture," and it would be doing a great injustice to individuals for this court, after the lapse of more than half a century, to give those laws a more narrow and strict construction than that received from the Mexican authorities who were entrusted with their execution.

PRESUMPTION OF RATIFICATION BY SUPREME GOVERNMENT.

It is claimed by the Government that the grant should have been made by the Board of Sales, which was created under the law of July 20, 1831, and I have shown that the office of the presiding officer of that Board of Sales had been abolished, and that all his duties had been imposed upon the Treasurer General of the Department who made this grant; and I have further shown that the second member of that Board, to wit, the Senior Officer of the Treasury, had been merged in the same office of Treasurer General; so that said Board could not have consisted at the most of more than two members—said Treasurer General and the Attorney General; and we have seen that the law creating said Board provided that the Attorney General should be a member only where there was such an officer at the place of sale, and I have shown that there was no such officer at the place of sale at the time this grant was made.

It being the duty of the Governor to inspect the accounts of the Treasurer General, and to remove him from office for abuse of power, or to report such abuse to the Supreme Government, we must presume that the political power ratified and approved this sale, as we are bound to presume that the Governor performed his duty.

See *Gonzales vs. Ross*, cited *supra*.

See also *Clinton vs. Englebrecht*, 13 Wall., 434, where this court held that Congress must be presumed to sanction a law, because it was the duty of the Secretary of the Interior to transmit it to Congress, and the simple disapproval by Congress would have annulled it.

This court said :

"It is no unreasonable inference, therefore, that it was approved by that body."

Since the Executive Department alone in Mexico had authority to reform or annul titles, and since, as has just been seen, that department must be presumed to have had knowledge of this grant and notice of the manner in which the same was made, the presumption seems incontrovertible that the Treasurer General had power and authority to make the grant, or that his act in doing so was afterwards ratified by the Supreme Government.

BOARD OF SALES CREATED BY LAW OF JULY 20, 1831, NEVER PERFORMED A SINGLE OFFICIAL ACT AFTER CREATION OF NEW BOARD BY LAW OF APRIL 17, 1837.

But the absence of all evidence from the record on the part of the Government showing that said Board of Sales created under the act of July 20, 1831, ever existed or performed a single official act after the date of the adoption of the law of April 17, 1837, is almost conclusive evidence that it no longer existed.

One of the special agents of the Department of Justice, Henry O. Flipper, was the only witness on the part of the Government who testified against the location of the boundaries of this grant as claimed by the petitioners; that witness acknowledged that he claims a right to one hundred and sixty acres of the best land within this grant. He qualified as an expert witness in the case by claiming to have examined more than two thousand Spanish and Mexican land titles, to wit, all of the grants in nineteen counties of the State of Chihuahua, and to having had twelve years' experience in examining titles and surveying grants in the State of Sonora. He admitted upon cross-examination that in the year 1890 he had examined the title to this grant and had made a sworn statement to the effect that he was familiar with all the laws, usages, and customs of Mexico relating to grants of land, and that the title to this grant, was genuine, and that the grant could only be defeated by establishing the indefiniteness of the boundaries, although he admitted that *all or nearly all* the title papers which he had examined were *equally obscure, uncertain, and indefinite* in this respect. (Record, pp. 205 *et seq.*, 227.)

This witness assisted Mr. Reynolds in the preparation of the trial of this case and upon the trial, and doubtless in the preparation of the brief on the part of the Government which has been filed in this Court.

This witness, together with Mr. Tipton, another special agent of the Department of Justice, made an exhaustive examination of the archives of Mexico at Hermosillo *since the trial of this case* and since the Court of Private Land Claims declared this grant void for the reason that the Treasurer General had no power to make the grant, and that *it must necessarily have been made by either the Board of Sales which was created under the law of July 20, 1831, or that created under the law of April 17, 1837.*

Said Special Agent Flipper had full knowledge at the time he made said examination of those archives that it was

the contention of the Government attorneys that the sale of this grant must necessarily have been made by the Board of Sales created under the law of July 20, 1831, or that created under the law of April 17, 1837, and he was likewise possessed of full knowledge of the fact that the petitioners in this case insisted, upon the trial in the lower court, that *the Treasurer General was authorized to make said grant alone* because of the fact that it did not exceed the sum of five hundred dollars in value. Said special agent, Flipper, made the translation of the title papers of this grant which appears in the brief of the Government before this Court, and he therefore necessarily knew that the recitals in said title papers show that *said Treasurer General claimed to possess the authority to make said grant alone by reason of Article 73 of said law of April 17, 1837.*

In view of all these facts, why has it not appeared in evidence or in the report of said special agents, Flipper and Tipton, that said Board of Sales created under said law of July 20, 1831, ever performed a single official act of any kind or nature whatsoever after the passage of said law of April 17, 1837? If said board *did* continue to exist and was *not abolished* by virtue of said law of April 17, 1837, the records contained in said archives must necessarily furnish ample proof of that fact, and the interest which said special agent, Flipper, had in this case as one of the defendants and as claiming to own a valuable part of this grant, besides the active partisan zeal he displayed as a witness in the case, as this Court can readily see by an examination of his testimony as contained in the record, and his duty to the Government as its special agent would certainly have led him to have reported such evidence had he been able to discover it.

We assert on the part of this petitioner that no such evidence exists, and that no single act was ever performed by said Board of Sales which was created by said law of July

20, 1831, after said law of April 17, 1837, went into effect in said Department of Sonora.

Must we prove this negative in order to establish our rights? It would seem to us that we are sufficiently protected by the presumption in favor of the validity of the acts of an officer, and that it rests upon the Government to *affirmatively* show that the construction which it attempts to place upon these laws contrary to the interpretation of them which was adopted by the officers whose duty it was to execute them is supported by those facts which could so easily be established if they do exist.

In the case of *United States vs. Arredondo*, 6 Peters, 728, this Court said :

"The acts of public officers in disposing of public lands under color or claim of authority are evidence thereof until the contrary appears by the showing of those who oppose the title set up under it and deny the power by which it is professed to be granted. Without the recognition of this principle there would be no safety in title papers and no security for the enjoyment of property under them."

In the case of *U. S. vs. Perala*, 19 How., 347, this Court said :

"The presumption arising from the grant itself makes it *prima facie* evidence of the power of the officer making it, and throws the burden of proof on the party denying it."

In *Hancock vs. McKinley*, 7 Texas, 443, the Court said :

"The construction of their powers and of the laws which conferred them, adopted and acted upon by the authorities under the former government of the country, must be respected until it be shown that they have clearly transcended their powers or have acted manifestly in contravention of law."

And again, in the same case, the Supreme Court of Texas said :

"It would not be reasonable to suppose that the higher officials who acted in the execution of this grant did not have as enlightened views in respect to the true policy of the Government and as just an appreciation of their powers and duties as we possess in respect to them."

To the same effect are *De Lassus vs. U. S.*, 9 Pet., 134; *U. S. vs. Clark*, 8 Pet., 452; *Strother vs. Lucas*, 12 Pet., 438, and many other cases.

I have insisted that the orders of May 10, 1829, and July 7, 1831, directed the Commissary General to sell temporalities and were still in force, and that the Treasurer General, who had succeeded to all the powers formerly exercised by the Commissary General under said laws of April 17, 1837, and December 16, 1841, was therefore authorized to sell this temporality, provided its value did not exceed the sum of five hundred dollars, without regard to the decree of February 10, 1842, since said orders were in no way inconsistent with said decree of February 10, 1842.

The circular issued by the Minister of the Interior to the Supreme Government of Mexico on May 25, 1838, and approved by the President of the Republic, found in vol. III, Compiled Laws of Mexico, page 557, says:

"It must be noted that there are in force all such laws as are not absolutely inconsistent with the prevailing system, and unless they are found to be expressly repealed by any other subsequent disposition, this rule also holding good in regard to those laws which were enacted in the old epoch and under the different forms of government which the nation has had," etc.

I submit, therefore, that said orders of 1829 and 1831 were still in force at the time this grant was made, and fully authorized said Treasurer General to make this sale.

DECREE OF FEBRUARY 10, 1842, ANALYZED.

The decree of February 10, 1842, directs and demands that the Boards of Sale in the several Departments shall proceed to sell "the properties" situated therein that pertain to the Department of Temporalities. It does not say ALL the properties, but simply "the" properties. In view of the interpretation placed upon this order by the Treasurer General of the Department, it is fair to hold that the words "the properties" mean all those properties of that character which the existing laws gave said Board of Sales jurisdiction over, to wit, all those exceeding the sum of five hundred dollars in value.

Naturally Santa Anna directed his orders to that body which was already entrusted by law with the sale of the more valuable ones. But that the greater includes the less is axiomatic; and since the object and purpose of this order was to procure revenues, and since the language of the order itself demonstrates the urgent necessity for such revenues and the extreme anxiety of the chief executive of the Supreme Government to secure them, it follows as a fair construction that said decree of February 10, 1842, is ample authority to the Treasurer General to himself proceed to sell all those temporalities which do not exceed the sum of five hundred dollars in value, as was done in this case.

"Equity abhors a forfeiture" and "every presumption will be made in favor of the validity of a grant."

In the case of *Strother vs. Lucas*, 12 Pet., 410, this Court said :

"When the act of the officer is done contrary to the written order of the King, produced at the trial, without an explanation, it will be presumed that the power has not been exceeded, and that it was done by some order known to the King or his officers, though not known to the subject. It must be clearly proven that he has transcended his power before they so determine it."

It is true this Court has held that this presumption could not apply to the acts of an officer under a constitutional form of government like Mexico's; that it only applied in the case just quoted because the will of the King was the supreme law of the land. We do not ask the Court to apply it in its full strength to this case, nor is it necessary; but we do insist that the principle which underlies it amply justifies this Court in holding to the presumption for which we have already contended, that if any express order to the Treasurer General to make this sale was necessary it must be presumed to have been given by the Chief Executive of the Supreme Government to the Governor of the department, who was made by law the sole conduct of communication between the treasury office of the department and the executive office of the nation, and that said Governor in turn communicated said order to said Treasurer General.

History shows us that there was no constitutional government in Mexico, in the sense in which we understand that term, from the year 1835 to the year 1847, at any rate. It is true that a pretense to constitutional government was maintained; but we know that Santa Anna never hesitated to override the constitution or to set any of its provisions aside. His orders and decrees were as absolute and binding as the order or decree of a King of Spain was, at the time of said grant referred to in the case just above cited, in so far as he was able to enforce his said orders and decrees by the use of an army or through the governor of the department, who was his appointee and who doubtless received many secret instructions from him.

It is a matter of history that the revenues of the Supreme Government of Mexico were at that time in a deplorable condition, and it is also matter of history that in securing money to run the government and to sustain himself in power Santa Anna paid little or no regard to the constitution or the laws.

Under this condition of affairs, I repeat that this Court

would be fully justified in adopting, and, in my opinion, ought to adopt the presumption set forth in the case just cited as applicable to grants made during this period of time.

But there is another fact which raises a strong presumption in favor of the interpretation that was placed upon his power by the officer who made this grant. A law of March 5, 1845, provides that "the property of temporalities and all others whatsoever *that have not been sold*, that have been set aside for hospitals, charitable institutions, foundling asylums, and others establishments for benefices or public instruction, shall be returned immediately to the authorities or corporations that were administering them, or are to administer them, in conformity with the laws."

"Art. 2. The full value of the property alienated by the Government shall likewise be returned to them, and the interest or annual charges on the capitals which were recognized when the alienations were made shall be satisfied for them, and the new charges to be made on those capitals, in favor of the establishments mentioned in Article 1, shall not, for that reason, create the right of authorization."

The land conveyed by this grant was the mission of Tumacacori, Calabasas, and Guebabi. The affairs of this mission were administered by the clergy—probably by the order of Franciscans—as we shall presently show, and in the year 1841, when a survey was being made for the sale of the vacant land between the Casita ranch and the Tumacacori and Calabasas mission, which vacant land was sold under the name of the Nogales grant, a Catholic clergyman responded to the notice for the owners of adjacent tracts to appear and point out their boundaries as the agent for the owners of the Tumacacori and Calabasas mission. (See record in case of *Ainsa vs. U. S.*, 161 U. S., 209, being case No. 429 of the October term, 1895.)

We also find that a clergyman appeared as the representative of the owners of said mission in the matter of a com-

promise of a dispute over the boundaries between said mission of Tumacacori and Calabasas and the Sonoyta land grant in the year 1823. (See Record, pages 279 and 280.)

May we not indulge the presumption, therefore, that if the granting officer exceeded his powers in making this sale of the grant here in question the order of Franciscans or the church authorities, whoever they might be, who had been in charge of the administration of this mission and whose representative appeared as late as the year 1841 would have taken some action under said law of 1845 to have this grant annulled, or at least would have made some effort to recover from the Supreme Government, under Article 2 of said law, the full value of the property which had been alienated by the government through the act of the Treasurer General?

It seems to me it is fair to presume that the church authorities demanded and received from the government the full value of their property which had been alienated by virtue of said sale, and hence it follows that the government must have had notice of the same and by its act in refunding the value of the property to the church authorities ratified and confirmed the act of the Treasurer General in making said sale.

THIS GRANT PROPERLY CLASSIFIED AND SOLD AS A TEMPORALITY.

It is contended on the part of the Government that the Treasurer General had no power to make the sale of the land contained in that grant for the reason that the lands in question were not *temporalities* within the meaning of said decree of February 10, 1842, or said orders of May 10, 1829, and July 20, 1831. In support of this contention the attorneys for the Government quote certain definitions of the word "*temporalidades*" as follows:

"Aggregation of proceeds or any other profane or worldly thing ecclesiastics receive from their benefices or prebendes."

Again:

"Proceeds, revenues, or any other profane thing ecclesiastics receive from their benefices or prebendes, and of which it is customary to deprive them when they contravene the laws," etc.

Counsel goes on to say that the order of Jesuits was suppressed by decree of the Cortez of August 17, 1820, which order was ratified by the decree of the Cortez of October 1, 1820, and that article 23 of said last decree provides that—

"All the movable and immovable property of the monasteries, convents, and colleges that are now suppressed or that may be suppressed hereafter * * * are placed to the public credit."

And, says the counsel for the Government, "these properties are the temporalities referred to in all subsequent laws on that subject."

Conceding that these definitions are correct, and that the statement of counsel for the Government is correct, I fail to see how it follows that the Mission of Tumacacori and Calabasas, which was the subject of this grant, was not a temporality.

Newman and Barreti's Spanish and English Dictionary gives as one of the definitions of the word "benefices" the following, to wit: "an endowment of land."

The decree of February 10, 1842, directs the sale of the "fincas" situated in each department that pertains to the department of temporalities. The word "fincas" signifies property—"not property in a general sense, but a particular class of property, usually real property, which has at one time been reduced to private ownership and capable of producing a revenue by its use or leasing."

See dissenting opinion of Justice Sluss, of the Court of Private Land Claims, in the case of San Rafael del Valle, being case No. 184, October term, 1896, now before this Court.

All *temporalities* were classified as national property under the law of August 4, 1824, and it is at least open to doubt whether the sale and control of all the vacant public lands within the borders of the several States were not vested in the States by said law. The State of Sonora so construed said law and assumed exclusive control of the vacant public lands within its borders as early as the year 1825, and retained all the revenues from the sales of such vacant lands to its own use, with the knowledge and acquiescence of the National Government, until the change in the constitutional form of the National Government in the year 1835.

This fact is fully demonstrated by said report of Special Agents Flipper and Tipton and by the correspondence between the State and National Governments which is contained therein, as well as by the certificate of José Maria Mendoza as Comisario of the Treasury of Arispe, in the State of Sonora and Sinaloa, the translation of which is set forth in full on pages 22 and 23 of Appellant's Reply Brief, by Mr. Rochester Ford, in the case of *Santiago Ainsa vs. U. S.*, No. 27, October term, 1897, of this Court, and the original of which appears in the archives of Sonora as an endorsement upon the expediente of the San José del Carrizo grant, which was issued in the year 1825.

Hence we see a clear reason for retaining mission properties as a distinct class of lands, falling under the term temporalities, and to be included in every national law relating to that class of property within the States of the Republic.

In the territories of the Republic it was not necessary to maintain any such distinction, perhaps, after the law of 1834 secularizing the missions, as the National Government was exercising dominion over all public lands, whether vacant or occupied, within the borders of the territories of the Republic.

It may be urged that after the year 1835 no such distinction was necessary in any of the Departments of the Republic, and this is logically and literally true. The dis-

stinction had already existed, however, for at least ten years, and consequently a decree for the sale of temporalities within the Departments, which had formerly been States, would necessarily be construed as including all property which had ever been impressed with that character, and over which the National Government had retained control under the law of August 4, 1824, and of August 18, 1824, and even under the regulations of 1828, and this undoubtedly included all the missions within the Republic.

The missions contained churches, haciendas, and cultivated farms, which were occupied by the Indians and the church or monastic authorities, and the revenues from which were administered by the church or monastic authorities and were devoted to the support of the church or of the particular monastic order in charge of said mission.

In his History of Mexico, Bancroft tells us that whenever a mission became opulent under the administration of the Jesuits or Franciscans the church hierarchy took it away from the monastic order which was administering the same and placed it in the hands of the secular priests in order to secure its revenues.

The history of the missions of Sonora shows that they were mostly founded and established by the Jesuits. Bancroft's History of Mexico contains an elaborate account of these missions. It tells us that the monk in charge of each mission had supreme power over the persons and property of the Indians, including their lands; that the lands were allotted to the Indians in severalty by the Administrator of the Mission, and were taken away from them and given or loaned to other Indians for cultivation at the pleasure of the Administrator. The Indians were compelled to labor as directed, and the proceeds of their labor were taken charge of by the religious Administrator of the Mission.

THE GRANT OF 1807 WAS FOR THE DECENT SUPPORT OF THE CHURCH OF THE MISSION OF TUMACACORI AND CALABASAS.

The original titulo of 1807, which is now before this Court, provides that the natives of Tumacacori shall enjoy the use and freely possess the lands referred to in the expediente for their own benefit in community and individually, and "*for the decent support of the church of said mission.*" (See Record, page 277.)

The Standard Dictionary defines temporalities as "a revenue or possession of a religious house or an ecclesiastic."

The lands comprised within this grant, therefore, undoubtedly constituted "immovable property of a monastery," and produced revenues which were applied to the use, benefit, and support of the church, and therefore they must necessarily fall within the definitions which have been given, even by counsel for the Government, of the word temporality, or "temporalidades."

That the Mission of Tumacacori possessed a hacienda is evidenced by the testimony of Jesus Maria Elias, who testifies at page 61 of the Record that his "grandfather was administrator of the hacienda of Tumacacori on account of the Mission of Tumacacori" at the time his father and mother were married in the church, photographs of which, marked Exhibit "C" and "D," are found at page 284 of the Record.

We have seen that the Mission of Tumacacori and Calabasas was represented by Friar Ramon Liberos in the year 1823, at the time of the compromise with the owners of the Sonoita grant of the dispute over the boundaries between said grant and this mission.

And we have seen that the Mission of Tumacacori and Calabasas was again represented in the year 1841 by a clergyman when the owners of said mission were called upon to

defend and point out its boundaries upon the occasion of the location of the Nogales grant, which has heretofore been before this Court.

In the petition for additional lands which is set forth in the titulo of 1807, at page 275 of the Record, it is alleged that said additional lands and places belong to the Mission of Tumacacori "by legal, public, and judicial purchase from their primitive and legitimate owners, and that since the time of the Jesuits our said Mission of Tumacacori possessed the same as a fundo (farm), all of which is shown by the respective instruments of sale and transfer executed before the legitimate authority by those ancient owners."

Counsel for the Government, in their brief, have held one of our witnesses, Mr. Ygnacio Bonillas, up to scorn and ridicule because he dared to assume in surveying this grant that said additional lands could by any possibility have been included in the sale as belonging to the class of temporalities.

This objection seems too frivolous to require any answer, further than to point out the fact that if these lands were purchased by the Jesuit order, which was administering the Mission of Tumacacori at the time, with funds of said mission, and were thereafter devoted to the support of the church and maintenance of the mission, it is difficult to conceive why said additional lands did not thereby acquire the character of temporalities.

Counsel for the Government have failed to point out upon what theory they based their assumption that only such lands as were gratuitously granted to the church by the Government became temporalities. Upon this theory I fail to understand how churches, colleges, hospitals, and rural or urban properties owned by the churches were all necessarily included in the word temporalities as used in the different national laws on this subject.

I am curious to have counsel for the Government point out in what elements these additional lands failed to fit the

definition of temporalities given in their brief if the other lands of this mission were properly classified as a temporality.

Bancroft tells us in volume II, *History of Mexico*, page 430, that as early as the year 1766 the Jesuits were required to pay one per cent. of all the produce of their haciendas, ranchos, and sugar plantations as tithes, and that they strenuously resisted the payment of tithes. This resistance, among other things, is given as a reason for the decree of February 26, 1767, of King Carlos III expelling the Jesuits from his dominion in Europe, America, and Asia.

At page 442, vol. XI, Bancroft's *History of Mexico*, we are told that on the 18th of July, 1767, the Viceroy and Audencio issued an edict for the abolition of the temporalities of the Jesuits, and again warning the people to be obedient and submissive to the King's orders.

In vol. XV, at pages 575 and 576, Bancroft tells us that under this decree the Padres were removed from all the missions, and a commissioner took possession and held all the property, subject to the order of the Government. Bancroft further states that "of the acts and words and feelings on reception of the said unexpected order to give up their missions, their neophyte subjects, the results of all their toils, the homes where many of their number had grown old, we know absolutely nothing, since for some unknown reason the Jesuits themselves have kept silence, and it was the policy of the Government to observe the strictest secrecy."

At pages 548 to 560 of the same volume we find an interesting account of a rebellion in the immediate vicinity of this grant on the part of the Indians, who, we are told, were subject to the Jesuits in Sonora.

We have just seen that the Jesuits were required to pay tithes amounting to one per cent. on all the products of the lands contained in their mission. It will certainly not be contended that the law for the payment of these tithes contemplated that they should only pay one per cent. upon the crops which the monks raised by their own personal manual

labor. The amount on such crops would hardly have been sufficient to have caused them to rebel so seriously against the tax.

It is apparent that the Jesuits considered the missions to be their property, and that the Government treated them as such, for under said order of the 18th of July, 1767, for the sequestration of the "*temporalities*" of the Jesuits, the Government took possession of the *missions* in Sonora, thus treating these missions as *temporalities*.

LAW SECULARIZING THE MISSIONS.

On April 16, 1834, a national law was passed in Mexico secularizing all of the missions of the Republic.

The Standard Dictionary defines the word "secularize" as follows:

"One to convert from sacred to secular uses; transfer from ecclesiastical to temporal control; use (a sacred thing) for secular ends or benefits."

It is difficult for the writer to understand the necessity for secularizing the missions, unless prior to that date they had been considered to be temporalities. How can anything be secularized which is already secular?

In the case of *U. S. vs. Cruz Cervantes*, 18 How., 555, this Court states that the missionaries and Indians had an usufruct or occupancy of the land at the will of the Sovereign, and that the legal title to the missions always remained vested in the Sovereign, and that after said law of 1834 the public authorities in the Territory of California granted these lands to individuals in the same manner as other public lands.

This statement is repeated by this Court in the case of *U. S. vs. Ritchie*, 17 How., 525.

It must be borne in mind, however, that the manner of making grants of land in California was defined by regula-

tions which were made specially applicable to that Territory or department, and which did not extend to the Department of Sonora.

In the case of *U. S. vs. Workman*, 1 Wall., 749, we find a letter from Franco, the Bishop of the Californias, dated November 17, 1840, and addressed to the Supreme Government of Mexico, on the subject of the secularization of the missions in California under said law of 1834.

In this letter the learned Bishop refers to the missions as temporalities belonging to the missionaries, and complains bitterly of the fact that they have been put in the possession of administrators for the Government who are demoralizing the Indians by their vicious conduct.

It seems plain, therefore, that the mission properties were universally considered as being temporalities.

It seems to me, however, that the question as to whether this mission was a temporality or not, like the question of its abandonment by the Indians prior to its sale, may properly be considered a question of fact, which it was the duty of the granting officer to determine before making the sale.

Suppose, for instance, that the proper officers of the Land Office, in the regular course of their duty, decided in good faith that certain lands are subject to purchase as desert lands, and that it afterwards turns out that these same lands will grow crops without irrigation and were not therefore properly classified as desert lands, can the grant be avoided by this Government upon the ground that the lands in question were improperly classified by the granting officers after the purchaser has paid for the same in good faith and has duly received his patent therefor?

In the case of *U. S. vs. Aredondo*, 6 Peters, at pages 646 and 647, this Court said :

"It is objected that the lands in question are within the Indian boundary and not subject to be granted. Of the fact that such location there seems to be no doubt, as the center

of the grant is the Indian town of Alachua. The title of the Indians to these lands is not a matter before us. The grant is made subject to their rights, if they return to resume them, and their abandonment has been ascertained by a proceeding which the intendente in the grant calls a sentence pronounced by him in his official character on the report of the Attorney and Surveyor General. * * *

"The fact of abandonment was the important question to be ascertained; if voluntary, the dominion of the Crown over it was unimpaired in its plenitude; if by force, the Indians had the right, whenever they had the power or inclination, to return.

"This is a matter which we feel bound to consider a judicial one, and that we cannot look behind that final sentence of an authorized tribunal to examine into the evidence on which it is founded, but must take it as a *res adjudicata* by a foreign tribunal, judicially known and to be respected as such."

As the courts of Mexico have no jurisdiction to reform or annul titles, and as that power rested in the political officers of the Government solely, it seems to me that the decision of the Treasury General, that this land did constitute a temporality, is a conclusive adjudication of that fact, at least until his decision has been set aside by the proper superior officer of the Mexican government, unless it is the purpose of this Government to now attack it upon the ground of fraud; and, if so, the burden is upon this Government to establish the fraud by clear and satisfactory proof.

ALLEGED FRAUD ON THE PART OF THE GRANTING OFFICER.

Fraud must be proven by competent evidence, and mere surmise will not be sufficient at this late day to establish the falsity of recitals in a Mexican grant.

Counsel for the Government say at page 71 of their brief:

"It is clear from the recitals in the papers themselves that Lopez knew he had no authority to make the sale of the lands if they were public lands of the nation, and he

sought to avoid this very difficulty by arbitrarily classifying them as temporalities."

And at page 72 of said brief they say :

" With this law recited as authority (the law of February 10, 1842) it is at least questionable whether Lopez (the Treasurer General) may not be charged with bad faith in failing to have the Board of Sales perform its duty instead of assuming to himself all the powers and authorities in the matter."

In other words, counsel takes the position that the Treasurer General acted fraudulently in making this sale. The language used by counsel can mean nothing else. It is well settled that fraud must be established by clear proof. Counsel for the Government does not enlighten us by pointing out a single recital in the title papers tending to show that Lopez knew he had no authority to make the sale of the lands if they were public lands of the nation, nor tending to show that he arbitrarily classified these lands as temporalities.

The recital in the title papers of the very authority upon which he makes this grant, to wit, Article 73 of the law of April 17, 1837, demonstrates that the Treasurer General *did* believe that he had power to make this grant of land, even if the lands were *vacant public* lands of the nation.

It cannot be doubted but that Lopez rested his authority to sell without the aid of the Board of Sales upon said Article 73 of the law of 1837, and in view of that fact it would have been absurd for him to arbitrarily classify these lands as temporalities and to recite said law of February 10, 1842, as authority for his power to make the sale when he clearly had the power to sell them alone if they were vacant public lands of the nation.

Fraud is never committed by an official who must be held responsible for his acts without some motive or reason. What motive could Lopez have had in arbitrarily classify-

ing these lands as *temporalities* in order to make this sale *alone*? It would have been just as easy for Aguilar to have filed a petition for the sale of the lands as vacant public lands of the nation, and in appointing the surveyors to survey and appraise the lands it would have been just as easy for Lopez to have selected persons who would appraise them at the sum of five hundred dollars or less. As a matter of fact, an examination of the appraisements of other grants of land which had been made in that section of the country will demonstrate the fact that it is much more than probable that an appraisal of these lands as vacant public lands in the mode ordinarily pursued, would have resulted in the grant being appraised at much less than five hundred dollars.

By classifying the lands as temporalities the Treasurer General did not avoid the thirty days' public notice of sale which was required to be given in the vicinity of the land, as is evidenced by the recitals in the title papers of 1844 and the titulo of 1844 itself. Neither did he avoid the three public auctions at which competitive bidders could appear.

It was necessary for the sale to be just as public and notorious when made by the Treasurer General *alone* as when made by the Board of Sales. The fact that but one bidder appeared at the sale cannot raise suspicion of fraud, in view of the numberless expedientes which disclose the fact that it was very seldom any purchaser ever bid at a sale in competition with the original applicant for the land, and there is no reason to suppose that competition would be particularly lively at this sale. The lands were situated in a most exposed portion of the country, where the Apache Indians made life and property unsafe, and few men would care to risk their money in stocking or occupying them.

Then, again, Urrea, who was the Governor of the Department of Sonora at the time this grant was made, was the bitter political enemy and successful rival of Gandara, whom he had driven from office. The Governor of the Depart-

ment at that time appointed the Treasurer General. Gandara did not even dare to purchase this property in his own name, but had his brother-in-law, Aguilar, buy it for him. While occupying the office of Governor, it is fair to presume, said Gandara became thoroughly posted on the laws relating to grants of land.

The appraised value of the land was a fair and adequate consideration for it at that time. What possible benefit could Gandara have derived, therefore, by having the sale made contrary to law, even if it was possible for him to influence the Treasurer General, who had been appointed by his enemy, and who was subject to removal by the appointing power at any moment?

Counsel for the Government must be entertaining the idea in their own minds that this land was as diligently sought after and as much desired in 1844 by citizens of Mexico generally as it is now by the squatters who have taken forcible possession of the best of it, and who are clamoring through said counsel to have this Government forfeit our title for their benefit. (Record, pp. 176-'7; 100.)

Gold had not yet been discovered in California, the war with the United States had not yet taken place, and the wildest Mexican imagination did not at that time conceive it possible that these lands would ever be made valuable by becoming a part of the United States. Why, then, should Gandara risk upon a fraudulent title, or one made contrary to law, the thousands of dollars which he must have anticipated expending in improving and maintaining possession of these lands when it was just as easy for him to have secured the lands in a legal and lawful manner at the same or a less price?

Can any reasonable man suppose that Gandara afterward made the vast expenditures which he did upon those lands to settle, cultivate, and improve them knowing that he possessed a title which would not stand the test of the laws of Mexico? When Gandara took possession of these lands, in

1851, or even in 1852, he certainly had no idea that they would ever become a part of the United States, and he must have believed that he would have the government of Mexico to deal with in regard to his title.

We see from the report of Messrs. Flipper and Tipton on page 78 that Gandara was Governor of Sonora again in the year 1848, and that Lopez was then again the Treasurer General of Sonora. How easy it would have been for Gandara and Lopez together to have arranged for a resale of these lands if they had previously acted fraudulently or in collusion, or if either one of them had any reason to doubt the validity of the title which had already been issued to Aguilar.

GANDARA FURNISHED THE MONEY FOR AGUILAR TO PURCHASE THE GRANT AS TRUSTEE.

That Gandara furnished the money to Aguilar with which to purchase the grant is admitted by the Government at page 185 of the Record.

The attorneys for the Government seemed to have forgotten this fact, as at pages 23, 24, and 25 of their brief they seize an early opportunity to attempt to throw suspicion upon the *bona fides* of this grant by inserting an *ex parte* affidavit of one M. Escalante, which was made before a notary public, at the town of Nogales, Arizona, on July 8, 1889.

The writer objected to the admission of this affidavit in evidence, and the Court of Private Land Claims sustained the objection.

I must frankly acknowledge that the objection was made upon the general principle that it is usually safe to keep everything out of the Record which is not clearly competent. The statements contained in this affidavit would have been ruled out as mere hearsay had Mr. Escalante attempted to

repeat them under oath as a witness before the Court of Private Land Claims.

Upon examining the affidavit with more care since the date of the trial, I find that it contains certain peculiar earmarks which stamp it as the ingenious production of Special Agent Henry O. Flipper, who testifies, at page 231 of the Record, that he knew M. Escalante and was present at the time of his death, in Guaymas.

Mr. Flipper attempted to file upon 160 acres of land within this grant about the 1st day of March, 1889. He has claimed to own that 160 acres of land within this grant from that day to the present time. (See Record, pages 220 and 221.)

The affidavit of M. Escalante was made on July 8, 1889, only four months later, at the town of Nogales, Arizona, where Special Agent Flipper was residing at the time.

It was only a few months later that Mr. Flipper made a report to a Washington attorney upon this grant, in which he stated, under oath, that he believed the grant to be genuine, and that it could only be defeated by establishing the indefiniteness of its boundaries. This report was made on behalf of the other squatters upon the grant, and as Mr. Flipper testifies that he received no compensation for his work, it is apparent that he was taking a lively interest in securing evidence to defeat the grant. (See Record, page 206.)

The form of the expressions used in the affidavit of M. Escalante shows plainly that Escalante made his original statement in the Spanish language, and that it was translated into English by some other person. Who is more likely to have been this person than said special agent, Flipper?

The affidavit was made more than eight years after the Surveyor General of Arizona had recommended the grant for confirmation, and it was made after both Aguilar and

Gandara were dead. The record shows that Gandara died in 1879, and that Aguilar died in 1886.

The law authorizing the Surveyor General to take the testimony of witnesses in regard to the validity of grants expressly authorizes him to personally examine such witnesses. The affidavit of Escalante was not even sworn to before the Surveyor General, but was taken before a notary public at the home of said Flipper.

The only vital statement contained in that affidavit is the following, to wit:

"That the aforesaid Francisco Alejandro Aguilar told him that Manuel Maria Gandara, herein above mentioned, had put his name in the alleged deed of the 19th of April, 1844, transferring the said Tumacacori and Calabasas private land claim from the Federal Government to himself, the said Francisco Alejandro Aguilar, and likewise in the same manner to the alleged deed of the 2d of March, 1869, transferring the said Tumacacori and Calabasas private land claim from said Francisco Alejandro Aguilar to the said Manuel Maria Gandara, and that he, Francisco Alejandro Aguilar, had never owned said lands, but simply acted as requested."

This quotation bears internal evidence of the fact that it is the production of an expert in the art of stating what is false under the garb of truth, or, to put it differently, in the art of stating the truth so that it may be tortured into a construction which is as far from the real truth as the heavens are from the earth.

It is plain that M. Escalante did not state literally that said Gandara had himself written the name of said Aguilar in the titulo of this grant, the original of which is now before this Court, and an inspection of which will demonstrate the falsity of the statement if that was the intention of the affiant; neither did said M. Escalante intend to state that said Gandara had personally written the name of said Aguilar in said deed of 1869; and if he did so intend to

state, the falsity of the assertion is apparent upon an inspection of said original deed, which is on record in this case in the Court of Private Land Claims.

Said special agent, Flipper, qualified in the Court of Private Land Claims as an expert on the handwriting of the different officials who made grants of land in the State and the Department of Sonora, including the handwriting of the clerks in said department who wrote said titulo of 1844 which is now before this Court and including the handwriting of Lopez, the Treasurer General, who executed that title paper.

Special Agent Will M. Tipton has also qualified before said court as such expert, and both Special Agent Flipper and Special Agent Tipton were present assisting the able Attorney for the Government, Mr. Reynolds, upon the trial of this case. The titulo of 1844 was submitted to the careful inspection of all those gentlemen before it was offered in evidence, and it had been on file in the office of the Surveyor General of Arizona from the year 1864 until the date of the trial of this case in said Court of Private Land Claims; and yet the authenticity and genuineness of that instrument have never been questioned, and when said titulo of 1844 was offered in evidence by the appellant upon the trial of this case it was admitted by the Court of Private Land Claims without any objection upon the part of the Government. (Record, p. 54.)

It is plain, therefore, that Escalante merely intended to make affidavit to the fact that said Aguilar had told him that said Manuel Maria Gandara had furnished the money for the purchase of said Tumacacori and Calabasas land grant, and that he, said Aguilar, had taken the legal title in his name in said titulo of 1844, as trustee for said Gandara, and that said Aguilar never claimed to own any interest in said lands or to hold them otherwise than as trustee for said Gandara.

Hence the affidavit of said Escalante simply corroborates

the evidence which we expected to furnish by one of the sons of Gandara upon the trial of this cause, and which the Government saved us the expense of furnishing by admitting the truth of the fact, as appears upon page 185 of the Record.

The other statements contained in said affidavit simply show that the sale of the grant in 1844 by the Federal Government of Mexico to said Aguilar was a common and well-known fact; and it was equally as well known, as shown by the testimony of the 15 witnesses who testified to the possession of the grant by Gandara as early as the year 1851, that said Gandara was the real owner of the grant, and that said Aguilar merely held the same as a trustee for him.

Said deed of 1869 from said Aguilar to said Gandara itself contains internal evidence of this fact, for it expressly states that no money passed between said Gandara and said Aguilar at the time of the execution of said deed. It contains the following recital:

"And since the delivery of the money does not appear, he (the grantor) renounces the law 9, title 1, partita 5." (See Record, p. 286.)

Before that, in the same deed, the following appears, to wit:

"The said sum being paid and satisfied, he (the grantor) executes in favor of Don Miguel Gandara in representation of his father, Don Manuel Maria Gandara, the receipt."

The grantor also declares that "the said amount of four hundred and ninety-nine dollars is the just and true value of said lands, the ownership and dominion over which he deeds," etc.

It will be particularly noticed that the value of the lands in 1869 is placed in this deed at the same figures at which it was sold to Aguilar in 1844, less \$1.00, one dollar. This dollar was doubtless omitted because of some additional tax

upon the execution of such deeds in Mexico, which would have been opposed had the sum reached the sum of five hundred dollars; but it is apparent that the valuation of four hundred and ninety-nine dollars was based upon the fact that the consideration for the land actually passed from said Gandara to said Aguilar at the date of its purchase from the Government of Mexico in the year 1844.

If Lopez, the granting officer, thought it necessary to arbitrarily classify the lands as temporalities in order to enable him to make the sale, why did he not make the proper Toma de Razon entry, upon which so much stress is laid by counsel for the Government, as well as by two members of the Court of Private Land Claims?

If Lopez was enacting a fraud for the benefit of Gandara at the time he made this grant, he certainly would not have omitted to make this entry unless it is conceded that it was not considered essential to the validity of the grant in Mexico.

To answer that Lopez omitted this entry so that his superior officers would have no knowledge that the grant was made is still more absurd, for the reason that if the execution of the grant was to be kept a secret there was no necessity for Lopez to arbitrarily classify the land as a temporality in order to make the sale alone, as we have already seen that he had ample power to make a sale of public lands alone.

But even if Lopez had not possessed power to make a sale of vacant public lands alone, at the time of this grant, it was unnecessary for him to arbitrarily classify the lands as a temporality if he was acting fraudulently, for the reason that if he had made the recital of the sale in the title papers, in accordance with the form usually pursued in the title papers in other grants, he need not have recited whether the sale was actually made by himself alone or by a Board of Sales.

In the Sonoita grant, the expediente of which will be

found in the record of case 181, October term, 1896, of this Court, the sale was made by a board of sales. The minutes of the sale are set forth in detail in the expediente, and the minutes of the last auction, as well as of each of the other auctions, are signed by the President and other members of said Board of Sales.

The titulo of said grant nowhere shows, either inferentially or otherwise, that the lands comprised in said grant were sold by a board of auctions or by any officer other than the one who executed the title paper, to wit, the Commissary General.

The recital in the titulo is as follows, to wit:

"And this Commissario General being satisfied with the foregoing petition, the three public auctions were made which took place on the 8th, 9th, and 10th days of November, 1821, the one sitio and three-fourths of another being solemnly auctioned off in favor of the denouncer, Don Leon Herreros, immediately notice of the transfer being added to the original expediente," etc.

We find exactly similar recitals in the expediente and titulo respectively of the San Rafael de la Zanja, except that the words differ slightly in the titulo of said grant, without, however, in any way indicating that the sale was made by any other officer than the Commissary General. The title papers of this grant are on file with the clerk of the Court of Private Land Claims, and have doubtless been examined by the attorneys for the Government.

This seems to have been the usual form of reciting in the titulo the facts in relation to the sale, and it cannot be doubted but that this Court would hold that upon such a recital the presumption immediately arises that the auction sale was made by the proper Board of Sales, if the law required the sale to be made by such a body.

Had Lopez made a similar recital in the titulo of this grant, he would have saved this appellant much trouble and expense, not to mention the fact that this Court would not

have had the labor imposed upon it of reading this long and probably tiresome brief.

In the face of these facts, the surmise on the part of counsel for the Government that Lopez acted fraudulently in arbitrarily classifying these lands as a temporality seems to be utterly without foundation. Had Lopez adopted the form of recital which is contained in said Sonoita titulo, he would not have recited a falsehood, even if he made the grant alone.

It must be apparent, therefore, that the recitals contained in this grant are the very highest evidence of the good faith with which the same was made by the granting officer.

If fraud had entered into the purchase of this land, Gandara would certainly have avoided any question as to the power of the officer who purported to make the grant, and he would certainly have provided and was in a position to provide the simple Toma de Razon entry, which this Court has already held is a sufficient short record of the grant, and which two members of the Court of Private Land Claims insist is the *only* record of the grant which can be recognized under the Gadsden treaty.

The ease with which such an entry would be inserted in either of the books of Toma de Razon which were found in the archives of Hermosillo is clearly demonstrated by an additional report of Special Agents Flipper and Tipton to the Department of Justice. That report shows a number of entries in the larger book of Toma de Razon at Hermosillo which are not in their proper places.

For instance, in the year 1848, at the very time that Gandara was again Governor of Sonora and that Lopez was Treasurer General, there is an entry in the book of Toma de Razon of a grant called Duraznoy Guamichil, which is dated July 25, 1846, and which follows a regular entry dated July 7, 1848. Other similar errors appear in said book. The grant just mentioned does not lie anywhere near the boundaries of the United States, and if fraud was perpetrated

in making that entry it was certainly not for the purpose of establishing title here.

That fraud was not the purpose of the entry is evident, however, from the fact that no attention is paid in Mexico to the question whether a grant is entered in the *Toma de Razon* or not, in determining its validity.

RÉSUMÉ.

Three members of the Court of Private Land Claims held that this grant was void for the reason that the power to make sales of land was vested only in the Board of Sales created under the law of July 20, 1831, and in the Board of Sales created under the law of April 17, 1837.

I have shown that when the States of the Republic of Mexico were abolished and an entirely new system of government was established under the constitution of 1835, which was known as the Departmental system, all the State and National offices ceased to exist, except those which were expressly retained temporarily and until new ones should be established by law and the functions of the same defined by law.

The law of April 17, 1837, provided a new and complete system for the collection of the revenues and for the conduct of the Treasury Department generally. It abolished the office of Commissary General and imposed the powers and duties of that office, together with many new and important duties and powers, upon the office of Superior Chief of the Treasury.

This law of 1837 required a Board of Sales consisting of certain specified officials, to the number of five, to make all sales and purchases on account of the Treasury Department when the amount of the sale or purchase exceed the sum of five hundred dollars.

The Board of Sales created under the law of July 20, 1831, was composed of the Commissary General, the Senior Officer

of the Treasury, and the Attorney General, where there was one.

Under said law of 1837, the Superior Chief of the Treasury was made the Senior Officer of the Treasury, and hence the duties and powers of two out of the three members of said Board of July 20, 1831, were combined in this one official, and this sale was made at Guaymas, in said State of Sonora, and there is no evidence that there was any Attorney General at that place at the time, and we must presume that the officer who made the sale performed his duty, and hence that there was no Attorney General at that place, if it appears that he took no part in the sale and if the law required him to do so. Hence if the Board of Sales, created under the law of July 20, 1831, was in existence at the date of this sale, the Treasurer General, nevertheless, had the right to make this sale alone, for the Superior Chief of the Treasury had been abolished by the law of December 16, 1841, and the duties and functions of that office were imposed upon the Treasurer General of the Department, and he is the officer who executed this grant and made the sale of the lands comprised in it.

The title papers of this grant, however, show that the granting officer interpreted said law of 1837 as vesting in him the power to make all sales and purchases on the part of the Treasury Department when the value of the same did not exceed the sum of five hundred dollars.

We have seen that no single act was ever performed by the Board of Sales created under said law of July 20, 1831, after the passage of this law of April 17, 1837, and hence it follows that either the chief officer of the Treasury had power to make such sales and purchases alone or else such power was not vested in any officer or Board, and we reached the absurd conclusion that no sale or purchase could be made on account of the Treasury Department unless it exceeded in value the sum of five hundred dollars.

It is conceded on the part of the Government that the

granting officer who executed the title paper, or patent, by which he sold these lands possessed the power and was the proper political officer to execute the titulo or patent, but it is urged that he misinterpreted the laws under which he assumed to act in determining the manner in which he should make the sale.

In answer to this contention, we submit that the following authorities, in addition to those already cited, are conclusive, to wit:

In *Mott vs. Reys*, 45 Cal., 379, the Supreme Court said:

"The general rule is, that when the acts of the officers of a foreign government are brought in question in our courts, the acts performed by them will be presumed to have been within the scope of their lawful authority, unless the contrary appears."

In the case of *Arguella vs. U. S.*, 18 How., 539, this Court said:

"The construction, therefore, which the Mexican officials put on the laws and their authority in making this grant raises a strong, if not conclusive, presumption that they were authorized to act as they did."

As the Supreme Court of Texas said:

"This court has repeatedly announced the doctrine that they will defer to the political and judicial authorities of other governments in the administration and interpretation of their own laws, and the court will respect the acts of the former authorities, as they must have known more about their laws than we do."

Halloman vs. Peebles, 1 Tex., 673.

Hancock vs. McKinley, 7 Tex., 384.

Edwards vs. James, 7 Tex., 382.

Cavazos vs. Trevino, 35 Tex., 133-157.

POINT II.

Was the grant located and duly recorded in the archives of Mexico prior to the Gadsden treaty?

Article 6 of the Gadsden treaty provides as follows:

"No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day (25th of September) when the minister and subscriber to this treaty on the part of the United States proposed to the government of Mexico to determine the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico."

It will be noticed that this article does not provide that grants made prior to the 25th day of September, 1853, will not be considered valid or be recognized by the United States, but simply that they will not be respected or be considered as obligatory if they have not been located and duly recorded in the archives of Mexico. In other words, the United States refuses to bind itself by the treaty to recognize such grants as obligatory and reserves to itself the right to recognize them or not, as it may deem just and proper.

In passing upon the validity of a title to a complete and perfect grant, it seems to the writer that this Court is not required to give any more consideration to Article 6 of the Gadsden treaty, just quoted, than it is to the laws, usages, and customs of the Mexican Government in determining the validity of its own titles, and to the well-recognized principles of equity and presumptions in favor of the grantee, who holds a formal title deed from the sovereign power; and therefore this Court is not bound to reject a grant in the absence of positive and express affirmative proof that the same had been duly recorded in the archives of Mexico prior to the said 25th day of September, 1853.

This Court did not hesitate to so hold in the case of *United States vs. Chaves*, 159 U. S., 452, as in that case this Court confirmed the title of Chaves to the land claimed by him, although the claimant based his right to the property upon possession alone, without the production of even the title papers, which were delivered to the grantee by the Mexican Government as evidence of his title and upon parol testimony that the same once existed, but had been lost.

In that case there was no evidence whatsoever by so much as a single witness that the expediente or any other record evidence existed. No witness testifies to having ever seen the same, and the only testimony produced on this subject was to the effect that the records purporting to contain the registry of said grants made by the Spanish and Mexican governments prior to the time the Government of the United States took charge were in a disconnected and fragmentary form, and that one of the most important books, containing the records of grants made by the Spanish and Mexican governments, was missing and was supposed to have been stolen.

In that case the counsel for the Government contended that the Court of Private Land Claims and this Court have no power to presume a grant upon proof of long-continued possession only; that their power is confined to confirming grants regularly and lawfully derived from Spain and Mexico; and it was doubtless argued by counsel, as has heretofore been done in Arizona cases before the Court of Private Land Claims, that proof of the existence of record evidence in the archives of Mexico is, under the prior decision of this Court, absolutely essential to the establishment of a valid title to a grant.

As there was no evidence in that case which tended to raise a suspicion of fraud on the part of the claimant, this Court evidently concluded that there was no field for the operation of the rule adopted by this Court requiring record

evidence of some kind in order to save the Government from spoliation of its territory by fraud, and the Court therefore proceeded to determine the case upon the well-established principles of equity and the law of nations.

The Mexican Minister at Washington, in a note addressed to the Secretary of the Interior of the United States on July 3, 1888, pursuant to instructions from the Secretary of State of Mexico, explained the understanding of the Mexican Government of that clause of the Gadsden treaty requiring record evidence in the following language :

" It seems to me clear that the said stipulation has for its object the prevention of approval of fraudulent concessions established by speculators, with the intention of acquiring lands that were never ceded to them by either the Spanish or Mexican governments ; but here the facts are that the family Garcia, to whom the concession (grant) was made, has been in legitimate possession of the land, and the concession was made according to the laws in force, and if they cannot furnish the official proof of these facts, this circumstance is due to the fact that the archives of the State of Chihuahua were destroyed by the invading American army during the war of 1846 and 1847, and therefore it would appear that the interpretation given to the treaty by the Surveyor General Julian cannot be sustained."

And further on he says :

" When the United States acquired a considerable part of Mexican territory, first by the treaty of February 2, 1848, and afterwards by the treaty of December 30, 1853, both governments agreed in their desire to protect the inhabitants in their rights acquired to the lands which changed national ownership and agreed to respect inviolably the concessions (grants) of lands made by Spanish and Mexican governments previous to the dates of both treaties, and in Article 8 of the first treaty and in Article 5 of the second treaty their right of ownership to all their possessions was acknowledged (recognized, sustained) and also their right to dispose thereof as they should see fit."

" But the object of this stipulation was merely to put an end to the abuses that had been committed by virtue of the

first treaty in the presentation of fraudulent grants, and it was never the intention to deprive the legitimate owner of a piece of land or his rights thereto merely because he was unable to furnish legal proof of the grant or its record by exhibiting his title in any case where the archives had been destroyed by the invading United States Army."

RECORD OF THIS GRANT IS ESTABLISHED BY WRITTEN DOCUMENTS OFFICIALLY CONNECTED WITH IT AND FORMING PART OF ARCHIVES OF MEXICO.

The record of this grant in the archives of Mexico was established before the Court of Private Land Claims by the production of four original official documents, photographic copies of which are found between pages 238 and 239 of the Record, and translations of which are found upon pages 240 and 241 of the Record, as well as by the production of certified copies of five other documents which form a part of said archives, the translations of which appear upon pages 235, 236, 237, and 238 of the Record.

The authenticity and genuineness of all these documents were established by overwhelming evidence and were not disputed by the Government upon the trial of this case.

Mr. B. Rochin, the official keeper of the archives of Sonora, was brought to Arizona and placed upon the stand of the witness before the Court of Private Land Claims with the four original documents upon which we rely to establish the fact that the expediente of this grant existed in the archives of Sonora on the 25th day of September, 1853, the date specified in the Gadsden treaty. (Record, pp. 24-42.)

The members of the Court of Private Land Claims, the counsel for the Government, Hon. Mat G. Reynolds, the counsel for the squatters who are defendants, the two special agents for the Department of Justice, Messrs. Will M. Tipton and Henry O. Flipper, each and all inspected and examined these four original documents, and no single person intimated the slightest doubt, upon the trial of this

case, but that said documents are genuine and authentic, and were made upon the dates they purport to have been made.

Eufemio Tapia, whose name appears upon the first photographic document as the party who signed the same, was produced as a witness and testified that these documents were executed at the time they purport to have been executed, to wit, February 8, 1857, and February 10, 1857, and that the original expedientes of the Tumacacori and Calabasas land grant were at that time delivered to him by the Treasurer General of the Department of Sonora or State of Sonora, being then produced from the official archives of said Treasury Department. (Record, pp. 42-47.)

Appellant further proves that all the other parties who had any official connection with said documents died before the trial of this case. (Record, p. 185.)

In order to save the court some labor, I shall discuss the evidence relating to this record at greater length after I have first discussed the law which I consider applicable to the question of the sufficiency of this evidence to establish the fact that this grant was "duly recorded" in the archives of Mexico within the meaning of said Gadsden treaty.

INFERIOR EVIDENCE IS SUFFICIENT TO ESTABLISH A RECORD
IF OFFICIALLY CONNECTED WITH IT.

In the case of *Weatherhead's Lessees vs. Baskerville et al.*, 11 How., 360, this Court said :

"The inferior evidence to establish the existence of a judicial record must be something officially connected with it, such as the journals of the court or some other entry, though short of the judgment of record, which shows that it has been officially made."

If such evidence is sufficient to establish the existence of a "judicial record," it seems to the writer that it is without

doubt competent and sufficient to establish such a record as we shall presently see was kept by the officials having charge of the sales of land in Sonora during the time that country was a scene of almost continual revolutions and frequent changes of government.

Under the principle here enunciated, it is plain that a Toma de Razon entry, the importance of which I shall hereafter discuss, would be sufficient in the absence of the expediente from the archives, coupled with slight proof of the destruction of the records generally.

I insist, however, that under the Gadsden treaty it was the intention of the high contracting parties that the existence of the expediente in the archives of Mexico at the date fixed in said treaty was the record intended to be required by the words "duly recorded."

There never was any express law, national, State, or, departmental, prior to December, 1846, requiring a Toma de Razon entry of a grant to be made, and that law was not retroactive, and therefore has no application to this grant which was executed in April, 1844; and I shall presently attempt to demonstrate that the Toma de Razon entry was made upon the expediente itself more than half the time, and that the practice of making such an entry in a separate book was not followed in more than one-half the grants made in Sonora from the time of its earliest settlement down to the date of the Gadsden treaty, and that the practice never was uniformly followed during any considerable period of time, and that therefore the practice of making a Toma de Razon entry in a separate book never was a usage or custom having the force of law.

INTENT OF CONTRACTING PARTIES BY INSERTING WORDS
 "DULY RECORDED" IN GADSDEN TREATY.

Blackstone tells us that in construing a law we should first examine the old law, then the mischief, and next the remedy. We know that article six of the Gadsden Treaty was intended as a *remedy*. We also know that the *mischief* which it was intended to remedy is fairly and correctly stated in the letter of the Mexican Minister at Washington, which has just been quoted.

The discovery of gold in California followed close upon the heels of this Government's acquisition of that immensely rich territory, and the phenomenally rapid increase in the value of property which but a few years before had been liberally granted by the Mexican Government in square leagues and not acres aroused the cupidity of unscrupulous land-grabbers, and in Pio Pico, who was Governor of California at the time the war broke out, these designing rascals found a willing tool to aid them in their efforts to steal property which had so suddenly become of immense value. It was proven to this Court by unimpeachable evidence, in numerous instances, that said Pico had fraudulently issued grants to different individuals after the war with Mexico had commenced and after the United States had secured possession of a large part of that territory, and that Pio Pico had antedated those grants to the end that they might be held valid under the treaty that terminated said war.

Antedated title papers were issued by Pio Pico in due form of law, and if they were to be adopted as *prima facie* evidence of title by this Government when produced from the pocket of the grantee or by his assignee, who in many cases was a *bona fide* purchaser for value, it would have been practically impossible for this Government to protect its property from gross fraud, because it was an easy matter to establish the fact that many of the records of the Mexican

Government relating to land titles had been lost or destroyed, and it thus became almost an impossibility for this Government to furnish conclusive evidence that the title papers in question had been antedated.

Necessity, therefore, compelled this Court to depart from the well-recognized principles of law which it has uniformly applied in passing upon the question of the validity of a title to land in the United States when the grantee holds a patent from this Government to his lands.

The laws of the United States require that a patent to land be recorded at length in certain books which are kept in the archives of this Government at Washington, and in that manner our Government preserves a record which gives the complete description of the land granted, and yet this Court held in the case of *U. S. vs. Marshall Mining Company*, 127 U. S., 569, that the recording of the patent is not essential to the validity of the title of the grantee.

In the case of *U. S. vs. Stone*, 2 Wal., 525, this Court said :

"The patent is the highest evidence of title, and is conclusive as against the Government and all claiming under junior patent or title until it is set aside by some judicial tribunal."

It cannot be doubted that had this grant remained within the jurisdiction of Mexico this claimant could have made out a *prima facie* case by simply producing his titulo and proving the authenticity of the signature of the granting officer. The absence of any trace of record evidence in the archives of Mexico would have in no way affected his title, and the burden would rest upon the Mexican Government to establish fraud by clear, convincing, and unequivocal proof in order to avoid the grant.

Under the treaty of Guadalupe Hidalgo, it seems to the writer, this Court would have adopted that principle in passing upon the validity of titles to grants in California, just as it did in the early cases under the Louisiana and Florida treaties. But in order to counteract the gross frauds

which had been attempted in California, the direct proof of which had been brought to the attention of this Court, it was necessarily compelled to refuse to indulge this presumption, and to require some evidence that at least a portion of the record of a grant which was required to be made by the Mexican officials existed or had existed in the archives, or, in the absence of any trace of such record evidence, that the grantee had been in possession of the land for a sufficient length of time prior to the treaty to avoid any suspicion of the *bona fides* of his claim.

As was said by this Court in the case of *U. S. vs. Neileigh*, 1 Black, 306 :

"The propositions laid down in the Castro case and others preceding it were an absolute necessity to save the Government from utter spoliation of its territory. * * * The numerous frauds which had been attempted to be perpetrated, depending upon this theory of the destruction of the records, have compelled us to reject it altogether as fabulous."

In the case of *De Aro's Heirs*, 22 How., 293, a grant was confirmed without any record evidence and upon the titulo alone and proof of its genuineness, accompanied with 16 years' possession of the land.

A careful examination of all the land-grant cases from California, however, will disclose the fact that when the authenticity and genuineness of the title papers were not disputed by this Government and when the grantee was in possession of the land prior to the acquisition of the territory by this Government for a sufficient length of time to repel the suspicion of fraud, that rule of necessity in regard to record evidence was never enforced.

The writer has not been able to find a single case in which that rule of record evidence was enforced by this Court when the facts of the case did not justify a strong suspicion that the title was conceived and executed in fraud; and the Court uniformly called attention to the facts creating this suspicion and to its existence, in apparent justification of the Court's

action in refusing to accord to the title standing alone all those presumptions which it would give to a patent from the United States.

In the case of *Gonzales vs. Ross*, 120 U. S., 629, this Court quotes with approval from the case of *Byrne vs. Fagin*, 16 Tex., 391, that—

“Where there is a testimonio there is a presumption that the original is among the archives of the land office in its proper place of deposit. At all events, it is for the defendants to show by proper proof that it is not there.”

In following Blackstone's suggestion that we examine the old law, then the mischief and then the remedy, we have already seen that under “the old law” the production of the titulo itself and the proof of its authenticity would immediately raise the presumption that the grant had been “duly recorded” in the archives.

We have further seen that the mischief rested in the fact that it was comparatively easy after the acquisition of California for Pio Pico, who had been Governor of that Territory, to manufacture and antedate grants which it would be difficult to defeat under the well-settled presumptions of the “old law;” and that, therefore, the remedy which the necessities of the times had forced upon this Court was adopted by our Minister when entering upon the treaty with Mexico for the acquisition of the lands comprised within the Gadsden purchase. It is fair to presume, therefore, that it was the intention of both the parties to that contract or treaty that only such evidence that the grant had been duly recorded should be required, as the investigations of this Court had already demonstrated to be absolutely necessary in order to protect this Government from being despoiled of its property by fraud.

TREATY TO BE LIBERALLY CONSTRUED.

So far as the rights of individuals are concerned, courts in the construction of treaties adopt those general rules applied in the construction of statutes, contracts, and written instruments generally, as was held by this Court in the cases of—

The Amiable Isabella, 6 Wheat., 1.

U. S. vs. Percheman, 7 Pet., 832.

North German Lloyd S. S. Co. vs. Hedden, 43 Federal Rep., 20.

United States vs. Payne, 8 Fed. Rep., 892.

And when a treaty admits of two constructions, one restrictive of the rights that may be claimed under it and the other liberal as respects such rights, the latter is to be preferred.

Sharkes vs. Dupont, 3 Pet., 242.

Hauenstein vs. Lynham, 100 U. S., 483.

1 *Kent Com.*, 174.

“No construction of a treaty which would impair that security to private property which the laws and usages of nations would, without express stipulations, have confirmed would seem to be admissible further than its positive words require.”

Strother vs. Lucas, 12 Pet., 438.

In the case of *Chew Heong vs. U. S.*, 112 U. S., 536, Mr. Justice Harlan, speaking for this Court, said:

“Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the Court cannot be unmindful of the fact that the honor of the Government and people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected; and it would be wanting in proper respect for the

intelligence and patriotism of a co-ordinate department of the Government were it to doubt for a moment that these considerations were present in the minds of its members when the legislation in question was enacted."

It cannot be doubted but that Congress, when conferring jurisdiction upon this Court to determine the validity of these land-grant titles, had in mind the former decisions of this Court as well as the confused and disorderly condition of the archives which are supposed to contain the records of these grants in Mexico.

It was not stipulated in the treaty that the Mexican Government should turn over to the United States that portion of its archives relating to the lands which had previously been granted by the Mexican Government within the limits of the territory acquired by the United States under the Gadsden treaty.

This Government never expressed a doubt or a suspicion, either by word or act, but that the integrity of those records would be as safely preserved and maintained by the Mexican Government after the treaty as this Government could or would maintain the same if in its own possession.

No effort has ever been made by this Government to secure that portion of those records *in toto* which relate to the lands within its borders. The owners of these grants have been left at the mercy of the agents of both the Mexican Government and this Government in regard to the preservation of the records upon which the validity of their titles is made to depend for nearly half a century.

When official documents connected with the record of a grant are now produced from said archives and are shown to be in the official custody of the keeper thereof, it will not do for this Government, through its counsel, to suggest or urge fraud on the part of the Mexican officials based upon mere surmise, inference, and illogical arguments.

As was said by this Court in the case of *U. S. vs. Auguy-sola*, 1 Wall., 358:

"When there is any just suspicion of fraud or forgery, the defense should be made below, and the evidence to support the charge should appear on the record. If testimony of witnesses is alleged to be unworthy of belief, the record should show some reason to justify the Court in rejecting it. The former opinions of this Court may be referred to on questions of law, but cannot be quoted as evidence of the character of living witnesses."

THE EXPEDIENTE IS THE RECORD OF A GRANT.

It seems to the writer that the true construction to be given to the words "duly recorded" as contained in the Gadsden Treaty is that the records or archives should contain the original papers of the original proceedings from the filing of the petition to the payment of the money by the grantee.

These proceedings were all required to be in writing and were finally all attached together, and constituted the only record evidence in the possession of the Government which would disclose the particular and specific portion of the public domain which had been alienated by its officers. The evidence contained in these expedientes is certainly of far more value in investigating the regularity of the issuance of a title than such entries as were sometimes made in a book of *Toma de Razon* could possibly be. The latter was merely a "short record" of the grant, as was said by this Court in one of the cases from California; but the expediente was the complete and full record of the grant, upon which the Mexican Government relied for information as to the regularity of the proceedings and as to the specific land which had been sold, as shown by the original proceedings of survey which it always contained.

In the case of *Hanrick vs. Barton*, 16 Wall., 172, this Court said:

"But the set of documents which make up the original title papers of any tract of land from the original petition of

the grantee to the final extension of title (usually called in Mexico the expediente) do belong to the public archives. They either have to pass under the examination and approval of the different officials concerned in granting out the public lands as the basis of their acts or they are the very acts themselves of those officials, constituting the preliminary and final acts of title, demonstrating for all future time the alienation of a specific portion of the public domain."

The expediente is original in all its parts and must necessarily be a much higher order of evidence than the mere note of the fact that a title had been issued, which was made in a book of *Toma de Razon*, and which did not describe the land alienated except by name of the tract.

In the case of *Peralta vs. U. S.*, 3 Wall., 440, this Court said :

"The Mexican nation attaches a great deal of form to the disposition of its lands and requires many things to be done before the proceedings could ripen into a grant, but the important fact to be noted is that a RECORD was required to be kept of whatever was done. These records were a guarantee against fraud and enabled that government to ascertain with accuracy what portions of public lands had been alienated from the records of the grant, and without it the title was not divested."

Here we have a direct and positive statement by this Court that the record of the proceedings—that is, the record "of whatever was done"—constituted the grant, and that without this record, to wit, this expediente, the title was not divested, and it logically follows that with this record the title was divested. The absurdity of the contention that the *Toma de Razon* entry was the only record of the grant which was intended by the words used in the Gadsden treaty is glaringly apparent when we come to apply it to an imperfect grant, as in the case of a grant of lands where the grantee made the proper payment of the fees and took possession of the land, after having complied with every requirement

of the law upon his part, but the official entrusted with the issuing of the title delayed issuing the title paper for many years thereafter. In that case no "record" of the grant could possibly exist in the archives of Mexico, as no *Toma de Razon* entry of the fact that title had been issued could truthfully have been made, and hence the provision of the treaty requiring a grant to have been "duly recorded" would be stripped of all its force and efficacy when applied to any imperfect grant, and it will surely not be contended that no imperfect or uncompleted grant was to be recognized under the treaty, as express provision is therein made to the contrary, and is likewise made in the act creating the Court of Private Land Claims.

In the case of *U. S. vs. Castro*, 24 How., 349, this Court, speaking through Chief Justice Taney, said :

"The general rule is that the grant must be found in the proper office among the public archives; that is the highest and best evidence."

We have just seen that in the *Peralta* case and in the case of *Hanrick vs. Barton* this Court declared that the expediente (the record which is required to be kept of whatever was done) was "the grant," and hence it follows, as the deliberate declaration of this Court, that the expediente "is the highest and best evidence" of the grant and of its record.

The rule laid down by this Court in so many cases that no grant would be recognized as valid under the treaty of one *Guadalupe Hidalgo* without some record evidence of the grant in the archives of Mexico was undoubtedly intended to be the rule which should apply under the *Gadsden Treaty* and which was expressed in the words "duly recorded."

That this Court considered the expediente alone as constituting a sufficient record under that rule is demonstrated by its decision in the case of *Hornaby vs. U. S.*, 10 Wall., 224.

In that case the grant was made only 51 days prior to

the date upon which the military forces of the United States took possession of California, and on which date the authority and jurisdiction of Mexican officials are considered as having terminated therein. The grantee never took possession of the land prior to the treaty. The grant consisted of over forty thousand acres of land, and its authenticity depended "on the testimony of a single witness, unsupported by any proof, except the imperfect or mutilated expediente found among a mass of loose papers on the floor of one of the rooms of the custom-house at Monterey, after the Mexican officials had fled on the approach of our forces." (See dissenting opinion of Justice Davis.)

TOMA DE RAZON ENTRY NOT AN ESSENTIAL PART OF THE
RECORD OF A GRANT.

The writer would not consume the time of this Court by a discussion of this question if he depended solely upon his own view of its importance; but a full presentation of his views seems to be required, or at least to be justified, by the fact that two of the members of the Court of Private Land Claims—Justices Murray and Fuller—concurred in an opinion holding that such an entry is the only record evidence of the grant which is sufficient to establish its validity within the terms of the Gadsden treaty requiring the grant to have been "duly recorded."

The opinion of these two justices is found on pages 333 and 334 of the Record. The learned justices have been unable to cite us to a single law or regulation—National, State, or Departmental—which was in terms expressly or by construction or by implication applicable to this grant at the time it was made by the proper official of the Department of Sonora in April, 1844.

The only law cited by them on the subject is that of December, 1846, more than two years after this grant was made, and requiring a note or Toma de Razou entry of

grants to be made and kept in the City of Mexico, but not requiring such an entry to be made or kept in the archives of the State or Department.

Even if said law did apply to this grant, this Court would presume that such an entry was made in the City of Mexico, for the reason that there is no evidence in the record to the contrary, and if such an entry was required it is a duty which was imposed upon some official to be performed by him after the grantee had completed every requirement of the law upon his part and had paid his money to the government, thus securing a perfect, equitable title to the land, as has frequently been held by this Court.

Articles 30 and 31 of said law of 1846 read as follows, to wit:

"30. The corresponding title to the property shall be issued by the Bureau of the Department to the person to whom the sale is made, which once made cannot again be opened.

"31. Every deed of sale shall be signed by the Board, and Toma de Razon thereof shall be made in the General Treasury of the Federation."

It will thus be seen that the law did not expressly require the Board or officer to make the Toma de Razon entry prior to the delivery of the title, and the making of such an entry may therefore be considered as the duty imposed upon one of the officials of the government which is to be performed after both the legal and the equitable title have vested in the grantee.

It is unnecessary to cite authorities to this Court to the effect that the failure of an officer of the government to perform such a duty can in no way injure the grantee. This principle was uniformly adhered to in all California cases which came before this Court.

The writer has not been able to find any law requiring a Toma de Razon entry of the grant to be made in a separate book, and the evidence in this case clearly shows that there

was no uniform custom or usage to that effect ever in existence in the State or Department of Sonora.

742 COMPLETED GRANTS IN ARCHIVES OF SONORA AFFIRMATIVELY SHOWING TITLE ISSUED AND ONLY 365 TOMA DE RAZON ENTRIES.

The present officer in charge of the archives at Hermosillo, whose title is that of "Keeper of the Archives," Mr. B. Rochin, testified, as shown at page 25 of the Record, that his duty is to keep all documents that are in the Treasury Department under his own responsibility, and that he is appointed by the Treasurer General of the State in conjunction with the Governor.

At page 26 he states that he knows of many grants the expedientes of which are found among the archives in his office that are not noted in any book of Toma de Razon. At page 31 he states that when he received the appointment the land titles were in complete disorder and complete abandonment, and his testimony shows that this was in the year 1888. He states the cause to be that when the archives were moved from Ures to Hermosillo they were in the greatest disorder and were not straightened out until he took charge of them; that the first thing he ever did by order of the Government, as the keeper of these archives, was to arrange the land titles and to prepare a statement showing the condition of those titles, which statement was put in evidence in this case.

At page 32 he states that in preparing that official statement (or, as he puts it, "in preparing the Toma de Razon of my own archives") he examined all of the expedientes, and that in every case in which he stated in that official report that the expediente was complete he meant that it contained the statements to the very last, "even to the payment of the fees," and that he did not examine the books of

Toma de Razon which are in the archives for the reason that he was making his own.

This official report upon the condition of the archives at Hermosillo, which was made by Mr. Rochin in the year 1889, contains a total of 1,193 grants. It shows and states that there are 742 completed grants in said archives, or, in other words, that there are 742 grants in said archives which bear positive evidence upon the expedientes that the proper fees were paid to the Government for the land and for the issuance of title papers, and that such title papers were actually issued.

In the only two books of Toma de Razon which are in said archives we find but 365 entries stating that titles had been issued.

He states that the Toma de Razon entry is nothing but a statement of the time when the title was issued and of the amount of land, and that said book does not contain a description of the lands except by the name of the grant.

In the case of *U. S. vs. Earl B. Coe*, in case No. 591, October term, 1894, now on appeal before this Court, the record shows that Victor Aguilar, then Treasurer General of the State of Sonora, testified in that case that the expediente of title is the original official record, and that the mere fact that the grant is not registered in the Toma de Razon did not divest the purchaser of the lands, and that the fact that the entry was not made in the Toma de Razon was not proof that the title was not valid under the laws of Mexico, and that the entry that title had been issued upon the expediente was sufficient Toma de Razon itself. In explanation of this testimony, it may be said that the words "Toma de Razon," liberally construed, mean simply a note or memorandum.

In the same case Mr. B. Rochin, the Keeper of the Archives, testified that there are many grants in the archives which are not registered in any book of Toma de Razon and which are recognized as perfect titles.

The evidence was then being taken at Hermosillo before one or more members of the Court of Private Land Claims,

and Mr. Rochin offered while testifying to show many expedientes having at the bottom of them the note of Toma de Razon that the title was issued, the names of which grants do not appear in any books of Toma de Razon.

Mr. G. H. Robinson testified in that case that all the proceedings relating to a grant of land were originally taken down on loose sheets until the whole of the proceedings were completed, and then sewn up together, and were then called the expediente, and that it is the original record of the grant; that the book of Toma de Razon was for the information of the Treasurer General; that he personally knew of several grants then in existence as valid titles, and recognized by the Government as valid titles, which do not appear in the book of Toma de Razon; that from time immemorial and in the time of the kings all these expedientes were kept as they are today, and there can be seen in the archives of the Treasury Department documents of the same class, kept in the same manner, and that the making of these expedientes was a matter of ancient custom and based undoubtedly on old Spanish laws.

Mr. B. Rochin, the Keeper of the Archives, testified at page 35 of the Record in this case, that he did not examine either of the books of Toma de Razon in his office in making up his catalogue or official record for the reason that "*the expedientes were sufficient for me, because amongst us the Toma de Razon is not necessary.*"

He further explains that—

"The completed expedientes that I have mentioned there were those that had all the requirements of the law for these titles, and had, besides the payment of the money, the last sales, and that a note should be made on that expediente in the matrix of it that a title for the land had been issued; that is a complete expediente."

Again he said, referring to these completed expedientes:

"Upon those expedientes there was a note made noting the fact of the date on which the title was issued."

At page 38 of the Record, Mr. Rochin says:

"An expediente contains everything. There is the petition presented by the party asking for the land, and the report made that the party asking for the land is able to settle it or take charge of it, and then the granting clause—first, the survey and payment of the fees, and at the very last of it there is a note made that the title has been issued, and a copy of the expediente is the testimonio."

REPORT OF SPECIAL AGENTS FLIPPER AND TIPTON SHOWS THAT A TOMA DE RAZON THAT TITLE HAD BEEN ISSUED WAS USUALLY PLACED AT BOTTOM OF EXPEDIENTE.

From the report of Special Agents Tipton and Flipper upon the condition of the archives at Hermosillo we find that an endorsement was usually made at the end of the expediente, over the signature of the granting officer, that final title had been issued on a certain date, and whenever that certificate failed to appear upon an expediente those two gentlemen, who have undoubtedly had vast experience in these matters, immediately entertained the presumption that because of said absence the title to that grant had never been completed, and in their earnest partisan zeal on behalf of the interests of the Government they even jumped at this conclusion and would indulge this presumption where that endorsement does appear at the end of the expediente, but the granting officer failed to sign it.

It is a pity that these Special Agents of the Department of Justice did not make an accurate list of all the expedientes which contain these certificates that title had been issued and then compare that list with those two books of Toma de Razon which are in the archives, so that this Court might draw its own inference as to the exact extent to which the custom of making a note in a separate book, or on a separate sheet of paper from the expediente, that title had been issued, did prevail within the jurisdiction of the State or Department of Sonora.

In the absence of any express law, either State, Departmental, or National, requiring such an entry to be made prior to the year 1846, and in view of the fact that such a national regulation did exist as to the territory comprised within the present State of California, such information would be of undoubted value; and in view of the fact that the attention of those Special Agents for the Government had been attracted to this question; and in view of the further fact that this question has arisen in nearly every one of the Arizona grants; and in view of the further fact that they must have been aware that two members of the Court of Private Land Claims had held in this case that such an entry in a separate book of *Toma de Razon* is the only evidence of record of a grant; and in view of the further fact that Special Agent Flipper was an adverse witness in this case, claiming an interest in the land involved, it seems incomprehensible that those agents did not seek this information, and it is only fair to account for that fact by presuming against the Government in this case that the information was not produced for the reason that it would not support the contention which is made on the part of the Government that such an entry is an essential part of the record of title.

DESCRIPTION AND CHARACTER OF THE ONLY TWO BOOKS OF
TOMA DE RAZON NOW IN ARCHIVES OF SONORA.

In this country we are accustomed to seeing records kept in books with bound covers, from which no leaves can be extracted without the fact being immediately discovered and into which no leaf can be inserted that is not originally there when the book was manufactured without the fact being discovered. Imagine one's feelings on picking up a "little pamphlet of Don Miguel Riesgo, in which there are five or six *Toma de Razons*," as Mr. Rochin contemptuously described it (see Record, p. 34), and to realize that little

book, containing only twelve uncovered leaves, and upon only five of which are there any entries of titles, and from which Mr. Rochin, without any hesitation, cut one of the blank leaves in the presence of Messrs. Flipper and Tipton, at the time they were preparing their report, for the purpose of patching a torn archive.

See pages 2, 3 of Special Report by Messrs. Flipper and Tipton.

That little book is in size about four inches one way by five the other. It has no cover, and the leaves are separate sheets, sewn together in the most rude manner. This book is marked "No. 1" on the first page, and there contains the following superscription: "Book in which is kept an account of the titles that are being issued by this Commissario General and of the certificates presented by parties in interest, in which they show that their titles are in Mexico for their confirmation." The first entry in the book is dated December 11, 1824, and the last entry is dated May 13, 1825, and the total number of entries is five or six, as just stated.

See testimony of Rochin, and also Supplemental Report of Messrs. Tipton and Flipper, page 2.

ERRONEOUS STATEMENTS IN REPORT OF SPECIAL AGENTS
FLIPPER AND TIPTON.

In connection with this book, I am compelled to call attention to the fact that the report of Messrs. Flipper and Tipton, which is of great value in many respects, is not entirely reliable, as the zeal of Mr. Flipper to defeat any and all Arizona grants seems to have led him into more than one gross error. That report states that there is no other book of Toma de Razon in the archives except one commencing in the year 1831; and yet said report, on pages 17 to 29, contains a list of nineteen expedientes which bear upon them an endorsement that final title was issued in the

year 1825, after May 13, including the San José de Sonoita, which is now before this Court on appeal, and the San Rafael de la Zanja, which is now pending before the Court of Private Land Claims; and said report proceeds to say, at the end of the abstract of each one of said nineteen grants, that "the book of Toma de Razon for 1825 is in the archives, but contains no entry of this title."

In the case of the San Rafael de la Zanja the report says, at page 20:

"The book of Toma de Razon for 1825 is in the archives, but contains no entry of this title; the last entry is May 13, 1825, and is followed by blank leaves."

The report also states that—

"An endorsement over the rubric of José Maria Mendoza states that final title was issued May 15, 1825."

The evident intention of Mr. Flipper is to convey the impression that this San Rafael is open to suspicion for the reason that there are blank leaves in that book of Toma de Razon containing a few entries of titles issued in 1824 and 1825, and that the entry of the San Rafael de la Zanja should have followed immediately after the last entry of May 13, 1825, which is in said book. The same thing must have been intended by him as to the Sonoita grant, in regard to which the report says:

"An unsigned endorsement says that final title was issued May 25, 1825."

This is an error, as it was May 15, 1825, the same day as the San Rafael de la Zanja grant.

The titulo of the Sonoita grant (see Record, Case No. 181, October term, 1896, this Court) contains the following endorsement at its end, to wit:

"Note of this title is found on page 3 of Book No. 2 of this general commissario."

The titulo of the San Rafael de la Zanja grant, which is on file with the clerk of the Court of Private Land Claims, and which undoubtedly has been examined by Messrs. Tipton and Flipper, contains the following:

"This title is recorded in folio 3 of Book No. 2, which exists in this general commissario."

Mr. Flipper assisted the attorney for the Government in the trial of the Sonoita case before the Court of Private Land Claims. It is hardly possible that his attention was not called to the fact that the titulo of that grant and of the San Rafael de la Zanja grant recites the fact that the Toma de Razon entry was made in Book No. "2" and not in Book No. "1."

As early as 1879, in his official report in the archives, Mr. Hopkins states "that notes on expedient's of grants of land in the Government archives of Sonora show that about the year 1825 a number of grants were issued by the above-named officer on proceedings which under the Spanish Government had not gone beyond the provincial Junta de Hacienda, having doubtless at that point been arrested by the revolution of 1821. In these cases no borradores or draughts of title are found in the expedientes, but *notes are found of the register of the grant in Cuaderno (Book) No. 2, in the office of the Commissario General.*"

We find this statement published in the report of the surveyor general of Arizona, at page 1128 "of the Public Domain."

Mr. Hopkins expressly states that he secured this information from the notes on expedientes of grants of land in the Government archives of Sonora, as I understand the reading of his statement.

The report of said special agents contains another glaring instance of the extent to which Mr. Flipper is willing to go in order to make the worst case possible against an

Arizona grant. At page 10 of the report we find the following :

" 163. Tumacacori y Huevabi (Arizona).—There is absolutely no record of this grant of any kind in the archives."

Mr. Flipper was present in the Court of Private Land Claims during the trial of this case and heard the testimony of Mr. Rochin and examined the documents which appear in the record between pages 238 and 239 and satisfied himself that the handwriting of said documents was that of clerks who were in the Treasury Department at the date upon which those papers purport to have been made, and yet he makes the unqualified statement that " there is absolutely no record of this grant of any kind in the archives."

The recklessness of such statements by Mr. Flipper is evidenced by the fact that at no time did he ever have free and unrestrained access to all, or even to a considerable part, of the records relating to land grants in said archives at Hermosillo. He and Mr. Tipton went there with a list of grants which had been cited by Mr. Rochester Ford in a brief filed by him, and on pages 1 to 5 of their report the special agents state the difficulties under which they labored in securing access to any grants except those located in Arizona.

It is a well-known fact that the records of the Arizona grants are not maintained separately and by themselves, and hence it is apparent that the only way in which these gentlemen secured the records of any grant in Arizona was by having a list of the grants whose records they desired to inspect, and by asking the keeper, Mr. Rochin, to furnish them with such records as related to each one of the said grants in turn.

That this is the method which was pursued in regard to the other grants examined by them is apparent from the statement made by them in relation to the Santa Rosa grant at page 29 of said report :

"146. Santa Rosa.—The keeper of the archive was unable to find this expediente in the archives. He assured us that it was there, but it had been misplaced."

The Santa Rosa grant is not an Arizona grant, and the only fact which induced Messrs. Flipper and Tipton to request the records of this grant for inspection was that it was mentioned by Mr. Ford in his said brief in the Canoa case. Mr. Ford took his list of grants from the list of grants from the Official Catalogue which was prepared by Mr. Rochin, and at page 97 of that Catalogue the Santa Rosa grant is listed by Mr. Rochin, and the statement is made that title was issued upon it in 1839.

Messrs. Flipper and Tipton did not state that they were unable to find their expediente in the archives, but that the Keeper of the Archives told them that he was unable to find it.

Neither do they state as a matter of fact that the expediente of said grant is not in said archives or, as they said in the case of this grant, that "there is absolutely no record of this grant of any kind whatsoever."

But as this Santa Rosa grant was not an Arizona grant, they content themselves by simply stating that the Keeper of the Archives was unable to find it, and that he assured them that it was there, but had been misplaced.

Perhaps these gentlemen requested the Keeper of the Archives to give them the records relating to the Tumacacori and Calabasas grant for examination, and perhaps for some reason of his own he may have seen fit not to let them handle the papers which are of so much importance to us and which appear in the record of this case, knowing, as he did, that they had both examined them in the Court of Private Land Claims; but that fact would not justify these special agents of the Government in making the unqualified statement in their official report which I have just quoted, and more especially would they not be justified in making said statement when both of them knew of the existence of

those papers at the time they made said report, and also doubtless knew that such papers were kept by Mr. Rochin in some private receptacle, drawer, or desk in his office.

DESCRIPTION OF BOOKS OF TOMA DE RAZON CONTINUED.

The two books of Toma de Razon are fully described in the testimony of Mr. Rochin, at page 26 of the Record and in the Supplemental Report of Messrs. Flipper and Tipton, as well as in the testimony of Mr. William M. Tipton, said special agent, which was taken in the matter of the Algodones grant and appears in the record, case No. 591, October term, 1894, of this Court.

The following question and answer appear in the testimony of Mr. Tipton in that case, to wit :

"Q. When you speak of leaves, did not this book consist originally of loose sheets of paper which were at some time sewn together?

"A. It was evidently sewn together at one time; yes.

"The first 68 pages or leaves of said book are all one kind of paper. Leaves 69 to 74, both inclusive, are on a different kind of paper; leaves from 75 to 78, both inclusive, are on paper bearing a printed stamp inscribed 'San Tesoreria;' leaves 79 to 82, both inclusive, are on paper not stamped; leaves 83 to 86, both inclusive, are on unstamped blank leaves, and 86 is not numbered, upper right-hand corner being torn off; whole number of leaves, 86."

See Supplemental Report of Messrs. Flipper and Tipton, page 6.

The last entry in this book is dated December 6, 1849.

This entry is followed by blank leaves.

Grants of land continued to be made by the Treasury Department of Sonora during the years 1850, 1851, 1852, 1853, 1854, 1855, 1856, and 1857, up to the date of the adoption of the new constitution in that year. This is not only a notorious fact, but the expedientes in the archives demonstrate its truth. It is also well known that many grants were made

by the State officials between the year 1825 and the year 1831; yet no explanation is attempted on the part of the Government to show why no book of *Toma de Razon* was kept during those years or the fact that such books were kept and were lost or destroyed.

In examining this book of *Toma de Razon* we find that it contains not a single entry of *Toma de Razon* of any grant made in the year 1840, and not a single entry of a grant made in the year 1842, and not a single entry of a grant made in 1844. In his letter of February 23, 1839, to the Secretary of State of the Department of the Treasury of the Republic, the Superior Chief of the Treasury states that parties who have registered grants are clamoring for their title papers, and urges that he shall receive immediate instructions in regard to the issuance of the same.

On May 26, October 17, and November 5 of the same year he wrote other letters to the Department requesting advice in regard to the manner of issuing these titles. Is it reasonable to suppose, in view of these facts, that no one single title was issued by him in said year 1840, or is it not more reasonable to suppose that he made the entries in favor of the interested parties upon loose separate sheets of paper, and that afterward, in the year 1845, this same Mendoza gathered up all the loose sheets of paper containing such entries of titles and sewed them together and placed his rubric upon each sheet, and placed at the end of those sixty-eight leaves the statement which we find in the Supplemental Report of Messrs. Flipper and Tipton? It might be suggested that said Mendoza did not issue any titles in the year 1840, for the reason that he was waiting to receive his instructions; but this suggestion is of no weight, for the reason that said book of *Toma de Razon* contains twenty entries in the year 1839, nearly all of them after the date of said letter of February 23, 1839, and all signed by said Mendoza.

On December 20, 1840, he had received the instructions for which he asked, and said book contains twelve entries

in 1841, all signed by Mendoza except three, which are not signed.

There is not a single entry in said book during the year 1842. What has become of all the applicants who were clamoring for titles? Mendoza stated in said letter that the issuing of the titles probably occupied the greater part of the labors and mechanism of his office, and that many proceedings were then pending in said office relating to the sale of lands, and that many new ones were being instituted "more and more every day." This would not lead us to the conclusion that no single title was issued in either one of the years 1840, 1842, and 1844.

OTHER GRANTS WERE MADE IN 1844 WHICH DO NOT APPEAR IN BOOK OF TOMA DE RAZON.

On page 14 of the official catalogue which was issued by Mr. Rochin is the following entry, to wit:

"Bacochibampo. (Rancho de) Municipalidad de Guaymas. Distrito del mismo nombre. Estado de Sonora. Un Solar y tres norias pertenecientes á la Nacion y situadas en dicho rancho, adjudidas en 1844 á Antonio Bustamante."

Counsel for the Government insist that this record does not disclose that title had been issued upon this grant. I take issue with him upon that fact, and will take up the time of this Court with but two illustrations in support of my position. Turning to the top of page 105 of Rochin's Catalogue, we find the following entry:

"San Jose del Cabrizo. (Rancho de) Municipalidad de Rio Chico Alamos. Estado de Sonora—Dos y cuarto sitios de terreno registrado en 1823 por D. José Antonio Garcia, a quien se adjudico en 1825."

Mr. Rochester Ford examined the original expediente of this grant at Hermosillo and informs me that Mr. Rochin's spelling of the word "Cabrizo" is an error, and that it should

be "Carrizo," and that this is the same grant which is mentioned at page 22 and the top of page 23 of the official report of Messrs. Flipper and Tipton. That report states that the expediente contains the following endorsement, to wit:

"The Commissary General states that full title was issued May 15, 1825."

I may add that the Toma de Razon entry of this grant was probably in said Book No. "2."

Messrs. Flipper and Tipton call attention to the fact that the certificates for patent of those lands is dated Arispe, May 2, 1831, six years after the title purports to have been issued, and were signed not by Commissary General Riesgo, who issued the title, but by the State Treasurer General, José Maria Mendoza.

Mr. Ford sets forth this part of the expediente of said grant in full on pages 22 and 23 of Appellant's Reply Brief in the case of Santiago Ainsa vs. U. S., No. 27, October term, 1897, of this Court.

On page 24 of said brief Mr. Ford says: "The latter part of this criticism is an error." As the document itself shows, as above set out, Mendoza signs not as State Treasurer General, but as *Commissario of the section of the Treasury of Arispe, in the State of Sonora*. He was a Federal officer, and his action in accepting this payment six years after Commissary General Riesgo had issued the title is a recognition of the validity of the act of the intendants and commissaries which cannot be gainsaid.

It was nothing unusual for the final title paper to be issued and its delivery withheld, as in the case just cited, till payment was made. A similar state of facts appears in grant No. 36, the payment for which was not made till June 16, 1831, as appears from the following record:

Mr. Ford then sets forth another record and says, at page 25 of his brief:

"That Mendoza was at this time a Federal official appears from the statement in the official report of the Government, at the top of page 33."

By "official report of the Government" Mr. Ford means said report of Special Agents Flipper and Tipton, to which I have so often referred.

Another instance of the same use of the word "adjudidas" or "adjudico" to signify that title had been issued is found in the Seri grant, near the bottom of page 103 of Rochin's Catalogue, which reads as follows, to wit:

"Seri. (Rancho del) Municipalidad de Hermosillo. Estado de Sonora, tres sitios de terreno registrado en 1826 por D. Fermin Mendez, a quien se le adjudico en 1838."

The report on this grant by Messrs. Flipper and Tipton is at pages 69-70 of their report and contains the following, to wit:

"An endorsement by State Treasurer General José Maria Mendoza that title was issued February 20, 1838. Treasurer General Mendoza reported February 15, 1838, to the Governor, who ordered said title issued, payment dated February 17, 1838. Endorsement by State Treasurer General José Maria Mendoza that final title was issued February 20, 1838. Book of Toma de Razon for 1838 is in archives and contains the same on page 2 of leaf 52."

There certainly can be no question about the legality of the record of this grant and of the facts that payment was made and that title was issued, as we have the double assurance of the expediente and the entry in the Book of Toma de Razon. There can be no doubt, therefore, but that Mr. Rochin used the word "adjudico" as meaning the title had been issued.

This word is frequently used in the granting clause of title papers used by the Mexican government. In the titulo of the Senoita case, before referred to, we find the following language used:

"I grant, give, and adjudicate," etc.

Hence the fact seems to be conclusively established that at least one other grant was made in the year 1844, and yet we have seen that said book of *Toma de Razon* contains no entries whatever for said year.

We have seen by the official record prepared by the keeper of the archives in 1889 that there are 1,194 expedientes on file in these archives. This official statement by Mr. Rochin is corroborated by said report of Special Agent R. C. Hopkins, for in 1879 he reported that he found between 1,200 and 1,500 expedientes in said archives. We have seen that Mr. Rochin's report shows that 734 of these expedientes are complete, or, in other words, show that final payments were made for the land by the grantees, and that the title had been issued to them. We have also seen that less than one-half of these titles were ever entered in any separate book of *Toma de Razon*.

If we adopt the theory of Justices Murray and Fuller, of the Court of Private Land Claims, that an entry in the book of *Toma de Razon* is absolutely essential to the validity of a title under the Gadsden treaty, and that it is the only record which can be considered, we are staggered by the obvious and gross injustice of the strict enforcement of such a requirement on the part of this Government the minute we set eyes on the only two books of *Toma de Razon* which are now in said archives.

Mr. Rochin testifies that these two books of Toma de Razon are the only ones he has ever seen in those archives.

Mr. Hopkins tells us in his report of 1879, in the most positive manner, that the larger one of these two books of Toma de Razon, to wit, that containing entries ranging from the years 1831 to 1849, was the only book of record in the said archives at that date.

We have already learned the confused state in which these records were at the time Mr. Rochin took possession.

All the facts, therefore, seem to lead us up to the inevitable conclusion that said book of *Toma de Razon*, in which

it is alleged by counsel for the Government that this title ought to appear, was made in the year 1845 by said Mendoza, who seems to have been the most efficient official who ever had charge of said office, and who, upon coming into office again in that year, doubtless attempted to methodically arrange the archives to some extent at least by sewing together these loose leaves. It is even doubtful whether the additional leaves were put in at that time and the cover put upon the book in the form in which it now exists. It is hardly possible that unstamped leaves would have been placed therein by Mendoza, who seems to have given some attention to form.

This book of *Toma de Razon* bears no number. The unreliability of this book of *Toma de Razon* and the deep injustice which would be imposed upon individuals by adopting the theory of Justices Murray and Fuller lead me to the belief that this Court will not consider those books as being of any particular value in establishing a record of a title, and will only accept entries thereon as evidence of the grant having been duly recorded, in the capacity of secondary evidence, equal to but no greater in value than the documents which have been put in evidence in this case.

No express law requiring any Toma de Razon entry to be made in a separate book having been cited, and no uniform practice in that respect amounting to a usage or custom having been established, and it appearing that it was almost, if not quite, a uniform custom to make the Toma de Razon of the issuance of the title upon and at the end of the expediente, it must be presumed that the expediente of this grant did contain such an entry.

ANALYSIS OF EVIDENCE PROVING RECORD.

In 1879 the surveyor general of Arizona appointed R. C. Hopkins as a special agent for this Government to examine the records in the archives of Hermosillo relating to land grants in Arizona. That highly intelligent and competent gentleman duly made a report upon the same in July, 1879. In making this investigation said Hopkins was fully aware of the requirements of the treaty that a grant should appear to have been duly recorded in the archives of Mexico prior to the date of said treaty. In making his own report to the Commissioner of the General Land Office said surveyor general of Arizona was likewise aware of this fact; and yet in his report made in 1881 said surveyor general reported this grant as undoubtedly genuine and as entitled to confirmation. The point was not raised on the part of the Government that said grant did not appear to have been duly recorded.

The *bona fide* possession of said grant by Gandara for at least three years prior to the date of the Gadsden treaty was a fact of common knowledge and notoriety in Tucson, Arizona, where said surveyor general was located, and must have been known to the said surveyor general and have had a controlling influence upon the character of his report, and the fact that said Gandara had also been in possession of said land from the year 1861 to the year 1864, at the time he filed his petition for confirmation of the same, must have been known to said surveyor general. Had the point been made at that time that the grant had never been duly recorded in the archives of Mexico, it must have been an easy matter for Gandara to have established the fact by the overwhelming testimony of witnesses who had taken part in the proceedings relating to the sale and of witnesses who had personally seen the original expediente in said archives.

Counsel for the Government say in their brief that be-

cause Gandara secured a certificate from Judge José Aguilar on October 10, 1861, certifying to the regularity and form of the certificate of Judge Ramon Cuen, which appears upon a copy of the original title papers of 1844, attached to a deed from Aguilar to Gandara in 1856, "it is apparent that the importance of a record title was not recognized by the claimants until about that time."

I may frankly admit that the apparent absence of all trace of a record in the archives of Mexico in regard to this grant was not called to the attention of this writer until the March term of the Court of Private Land Claims, in the year 1894, and that he asked for a continuance of the case at that time for the express purpose of making a personal investigation and attempt to discover whether any such record was still in existence.

Only a short time before the Court of Private Land Claims again met for its March term, in 1895, the efforts of this writer resulted successfully after the expenditure of a large amount of time and effort. The witness Carlos Velasco was sent to Hermosillo, and by reason of his personal political influence succeeded in having an exhaustive examination made of the records, by the keeper of the archives, of the mass of loose and unarranged records and papers which were in his possession. This is probably the first thorough examination that was ever made of those papers for any purpose, and it was certainly the first that was ever made to the knowledge of this writer for the purpose named.

The keeper of the archives, Mr. B. Rochin, then discovered the documents relating to this title, which were put in evidence by the claimant and which appear between pages 238 and 239 of the Record.

It is only fair to state further that said claimant acquired this grant in good faith on February 11, 1890, for the valuable consideration of \$65,000.

See Record, p. 304.

This conveyance was made long subsequent to the report by the surveyor general of Arizona, stating that said grant was genuine and recommending the same for confirmation to the full extent of its boundaries, as set forth in the title papers.

The claimant offered to prove that he and his immediate predecessors had expended more than \$40,000 additional upon the grant in improvements, but the Court of Private Land Claims ruled out this evidence as not competent or pertinent (see Record, page 102), although two members of the Court of Private Land Claims in confirming the Algadones grant, now on appeal to this Court, being case No. 45 of the October term, laid great stress upon the fact that the claimants expended a large amount of money in improving their grant, although no pretense is made that possession was ever taken prior to the acquisition and occupation of the country by the United States.

DESTRUCTION OF RECORDS GENERALLY.

The testimony of Carlos Velasco, at pages 47 to 54 of the Record, and particularly on page 53 of said Record, shows that he examined the archives of Sonora in the year 1875, as president of an investigating committee of the States of Sonora and Chihuahua, as preliminary to making an investigation of the damages caused by American citizens and Apaches on the other side of the line and to investigate the damages caused by Mexican citizens on this side of the line, and that he found those records in a deplorable condition; that they were all mixed up and incomplete; that there was no regularity whatever about them; that there were papers of different years all mixed up indiscriminately, and there were many documents wanting; that the revolutions of 1856 to 1861 or 1862 had resulted in the destruction of many expedientes; that it was publicly known in Sonora that at the time the French troops came into Ures the doc-

uments were kept in the house of the Government, and it had rained there and it was very muddy, and the French troops had thrown these expedientes out into the mud—"very far out they threw them in order to step over them for stepping ground."

Mr. Hopkins also states in his official governmental report that—

"Many of the original archives of the Government have been destroyed in the frequent revolutions which for many years have wasted that unhappy country, and this tradition would seem not to be without foundation, since the very building in which they were kept bears many marks of hostile attacks." * * * "There are no means, however, of ascertaining what, if any, expedientes have been lost or destroyed, since they are not consecutively numbered, nor is there any corresponding book of record in which an entry is kept of these expedientes of grants."

Mr. Hopkins also states in that report that in case of the loss of a testimonio or title paper "a new and legitimate offspring could always be produced from the original matrix (expediente), so long as the same continued to exist in the archives, and in case of the destruction of the matrix (expediente) I presume the legitimacy of the offspring could not be attacked, so long as the same was intact; but the destruction of both the parent and offspring would necessarily end the generation."

It would appear from this statement of Mr. Hopkins that his investigations led him to the same conclusion which has been stated by Mr. Rochin, to wit, that among them the Toma de Razon entry is not necessary, and that the entry upon the expediente that title had been issued or that the fees had been paid was sufficient in itself to warrant the keeper of the archives in issuing a new title at any time. That this is the practice in Sonora at the present day cannot be doubted.

EVIDENCE OF RECORD CONTINUED.

In this case we find in the record much stronger evidence of the fact that the archives of Sonora were lost and destroyed and were in great disorder and confusion after the year 1844 than was produced on the trial of the case of *U. S. vs. Chaves*, cited *supra*, and it seems to follow that if the expediente of the Tumacacori and Calabasas grant was returned to the archives in 1857, it was abstracted or destroyed during the French revolution in 1861-'2.

In addition to this testimony in regard to the loss of records, we have produced documentary evidence which leaves no room for doubt in the mind of any impartial investigator that the expediente of this grant was in the archives of Mexico at Ures, the capital of the State of Sonora, as late as the 10th day of February, 1857. It is not sufficient for the Government to suggest fraud in its argument upon the theory that this expediente was placed there after the year 1844 and by inference after the date of the Gadsden treaty and prior to said 10th day of February, 1857; fraud must be expressly alleged and clearly proven. We cannot be deprived of our title by any such unfair suspicion or inference without a syllable of testimony to support it.

Mr. Rochin testifies that at the time he prepared his catalogue of the expedientes contained in the archives he did not know of the existence of these papers in his archives, and that after he got through forming that catalogue he went through other papers in order to arrange all the papers belonging to the general archives, and placed them in a big book which Messrs Flipper and Tipton had seen, and that he looked for the other papers relating to land matters among the papers of corresponding years whenever he had occasion to need them, and that he found these papers after he made that statement, and that they were in loose leaves—loose pages—which loose pages are contained in five

boxes in his office; that those five boxes were in the office when he took possession of the archives and contained the expedientes from which he made his catalogue.

In their report, at page 5 thereof, Messrs. Flipper and Tipton make the following statement, to wit:

"We made inquiries as to correspondence between the State or Departmental authorities and the National authorities, and were informed that if any such correspondence existed, which was doubtful, it would be found in the archives of the Secretary of State, but that those archives were very voluminous, unarranged, and in the greatest disorder and confusion, and we found that with the work we already had in hand and the unexpected delay to which we had been subjected it was impossible for us to examine them in the time at our disposal."

We have already seen the condition of the archives in the office of the Treasurer General at the time Mr. Rochin took charge. Is it any wonder, therefore, that the appellant did not succeed in discovering the official documents relating to the record of this grant at any earlier day?

The fact that the expediente of the Santa Rosa grant could not be found by the Keeper of the Archives at the time Messrs. Flipper and Tipton were making their examination, although he assured them it was still in the archives, is a fair illustration of the difficulties with which one meets in examining those archives, even at this late day.

Another illustration of the condition of these archives is found in the testimony of Mr. Rochin at page 33 of the Record, where he states that a "cargos y datos" is a book which is kept in the Treasury and which shows the amounts that "cargos" (come in) and "datos" (go out)—in other words, a book containing the receipts and disbursements of the Treasurer General's office. This is the most important book which was required to be kept in that office, and we have seen that this book was subject to the inspection of the Governor of the State or Department and of the Commander

General of the Army, and that it was the duty of the Governor to inspect it at least once each month. It contained the receipts from the sales of lands. This book for the year 1844 has been lost from the archives and does not now exist therein. (Record, p. 33.)

Mr. Rochin proceeds to state that the book of "cargos y datos" is also lost from the archives for other years, and that said book for the year 1833 had been lost from the archives, but that he had been ordered by the Secretary of State to hunt up some law, and he found the book of "cargos y datos" for said year 1833 in the archives of the Congress of the State Legislature, and also found other documents there, which he was ordered to bring up to his archives; that he found at the same time and in the same place the book of "cargos y datos" for the year 1850. (Record, p. 33.)

HANDWRITING OF BODY OF RECORD EVIDENCE IS THAT OF
DEPARTMENTAL CLERK OF THAT PERIOD.

The good faith of the appellant in putting these records in evidence, as found between pages 238 and 239 of the Record in this case, is demonstrated by the fact that he did not content himself by presenting to the Court of Private Land Claims the certified photographic copies of said documents, the fac-similes of which are in this record, but had Mr. Rochin, the keeper of said archives, come more than 400 miles to the city of Tucson, in order that said court might have the satisfaction of examining the original papers, so that their genuineness and authenticity might be tested by a personal inspection on the part of the members of the court, and on the part of the two special experts for the Department of Justice who were present at the trial, as well as on the part of the attorney for the United States, Hon. Matt. G. Reynolds.

Rochin testified, at pages 27 to 31 of the Record, that those documents form a part of the archives which are under his

official custody. He also testified to the genuineness of the signatures upon them, and to the fact that the same handwriting which is contained in the body of the papers appears in many of the expedientes of about that same date, which form a part of the archives in his charge.

Special Agents Flipper and Tipton, as well as the attorney for the Government, examined all four of those papers before they were offered in evidence, and Mr. Flipper testified as a witness in this case, and qualified himself as having an expert knowledge of the handwritings of different officials, which appear in the archives at Hermosillo, and yet all four of these documents were admitted in evidence without any objection on the part of the Government and without their authenticity or genuineness being questioned in any way.

At page 28 of the Record Mr. Rochin testifies that the handwriting in the body of the papers is that of one of the clerks who was in the office of the Treasurer General of the State of Sonora at that period of time, as is evidenced by many other documents therein bearing the same handwriting.

BEST EVIDENCE PRODUCED AS TO GENUINENESS OF DOCUMENTS.

Other original documents were also offered in evidence and proofs of their genuineness made, not only by the testimony of Mr. Rochin, as appears upon pages 26 to 31 of Record, but by the testimony of Don Eufemio Tapia, who was the provisional treasurer of Sonora at the time of the proceedings mentioned in them. Tapia also testified in regard to the record documents contained between pages 238 and 239 of the Record. I particularly invite the attention of this Court to the entire testimony of said Tapia. Counsel for the Government have attempted to place a construction upon some parts of it that will not bear the test of a candid inspection of the entire testimony.

The earnest effort of the writer to throw light upon the

question of the authenticity of these documents is further shown by the fact that said Tapia was likewise brought from the State of Sonora to testify in person before said Court of Private Land Claims instead of his deposition having been taken in Mexico.

Tapia stated that he was 71 years old and that he had about forgotten how to read his own language. (See Record, pp. 42 to 47.)

He could not speak English nor understand it, and the writer could neither speak nor understand the Mexican language.

DIFFICULTY OF PROCURING EXACT INTERPRETATION OF EVIDENCE.

The difficulty of getting exact interpretations by the official interpreter is sufficiently illustrated in the record in connection with the examination of the witness Jesus Marie Elias. At page 66 of the Record, in answer to the question "How long after that was it that you went down there and saw that north monument?" the witness was made by the interpreter to reply as follows, to wit: "A. I can't remember at present. I don't remember. I think it was ten or twelve years afterwards."

At page 70 of the Record we find the following, to wit:

"Continuation of trial pursuant to adjournment:

"JOSE MARIE ELIAS recalled.

"By Mr. HENEY: During the recess I have had my attention called to three or four serious errors made in the interpretation of the answers of the witness. I am told this by gentlemen highly educated in the Spanish or Mexican language. I am satisfied they are not due to any intention, but I suggest that the interpreter should be more careful. I am told that where the witness said 'two or three years' it was interpreted 'twelve or fourteen years,' but I am told the Spanish for these words is very similar.

"By the COURT: Very well; make your corrections.

"Q. How long after the surveyors told you about this monument or how long after you heard the surveyors talking about the monument at San Xavier was it until you went to the place and identified the place yourself where the monument was?

"A. Two or three years.

"Q. Now, another thing, I tried to get you (the interpreter) to put it to him whether he was positive about 1851, and he now says he never understood that question to be put that way. Now, put it to him literally as I ask it. I do not mean this as a lecture, but I wish to have it certain. Are you positive as to the time that Frederick Hulseman first came to Calabasas?

"A. I am not certain about the day or the month, but in the year 1852, when I went from here to Magdalena, in passing by there, and when I came back again in the same year he was already there.

"Q. Do you know positively whether he was there in 1851 or not?

"A. I do not."

These two answers of the witness were very important, and especially the first one, in which he was identifying one of the monuments of the grant, and in which it was made to appear by his testimony, as interpreted, that he had not gone there until ten or twelve years after the place had been described to him instead of two or three years thereafter.

In regard to the other question, he had been made to state positively that Gandara was not in possession of the grant in the year 1851, when as a matter of fact the witness had not gone by there until the year 1852, when he did find Gandara in possession and without knowing how long Gandara had then been there.

TESTIMONY OF EUFEMIO TAPIA.

When the writer was examining said witness Tapia he was finally compelled to put some leading questions. At page 45 of the Record the following appears:

"Now, these papers that were sent to you to examine—this title—were they the original papers that were on file there in the archives?

"Objected to by counsel for the Government as a cross-examination of his own witness and as calling for a categorical answer.

"By the COURT: It is leading, but it seems difficult to get the witness to comprehend. Objection overruled.

"A. Yes, sir; after I made that report the papers that had been sent to me were returned to the place from which they had been sent."

At page 47 of the Record the following appears as the testimony of said witness Tapia:

"Q. Do you know the difference between the papers called the *expediente* that are kept in the archives and the ones given to the possessor of the land? Yes or no is all I care for.

"A. Yes, sir. The first one is the original, and the *testimonio* is the second.

"Q. Now, the papers that were sent to you for examination were sent from the archives, were they not?

"A. Yes, sir; from the *Oficina de Liquidacion*.

"Q. And they were originals, were they not?

"A. That office sent to me the papers.

"Q. And those are the papers that are kept in the office and not given to the ones that buy the land?

"A. Yes, sir; they are the originals."

It will be seen, therefore, that the witness Tapia distinctly and positively testified that the title papers of the Tumacacori and Calabasas grant, which were the subject of the archive documents which appear in this Record between pages 238 and 239, were the original papers which were pre-

served in the archives, and that by the "original" papers he meant and intended the expediente and not the testimonio, which is the second.

And yet counsel for the Government indulge themselves with a statement, on page 26 of their Brief, that the testimony of the witness Tapia established the fact that the title papers which he examined in the year 1857, and which were the subject of the documentary evidence so often hereinbefore referred to, was the titulo of 1844, which is now in evidence in this case, and the original of which is now before this Court.

I have felt justified in making the long quotation, showing the mistakes of the interpreter with other witnesses, for the reason that it was impossible for me to know exactly what idea was conveyed to the mind of Tapia by the question put to him by the interpreter, to which he made the answer, "If I am not mistaken, that is the same." The Record shows at page 45 that the witness then had in his hand the titulo of 1844, and that the following question was put to him: "Look at this paper and see if that is the paper that was sent to you in 1857. Look it all through and see if you do not recognize that. Look at the last part particularly."

And to this question his answer was as just stated. *It was immediately after this and upon a redirect examination that the witness gave the testimony just hereinbefore quoted, in which he stated that the title papers which were given to him in 1857 were the original expedientes which are kept in the archives.*

On account of the difficulty of examining a witness through an interpreter and on account of the age of this witness and his statement that he had almost forgotten how to read and write, it seems to me only fair that this Court should accept his answer, "If I am not mistaken, that is the same one," as being a direct statement that the original expediente which he examined and which

was in the archives in 1857 was the expediente of the grant which was made in 1844, and not the expediente of the grant which was made in 1807. By giving it this interpretation the testimony is in no way inconsistent with all the balance of his testimony, and I submit that my redirect examination of the witness and his replies thereto entirely destroy the construction of his answer ("If I am not mistaken, that is the same one") which the counsel for the Government now attempt to place upon it.

The witness distinctly stated the true difference between an expediente and a titulo, although my question expressly directed him to confine his answer to "yes" or "no," and he then repeated that it was the original expediente which he had in his hands.

The record shows that all the parties who had signed said documents, except Eufemio Tapia, died before the date of said trial of this case in the Court of Private Land Claims.

The documents are sufficient in themselves to establish the fact that the expediente of this grant existed in the archives of Mexico as late as the 10th day of February, 1857, but we established our good faith by bringing before the Court every living witness who might be expected to have actual knowledge of any of the facts or by accounting for his absence.

ANALYSIS OF DOCUMENTS ESTABLISHING RECORD.

Said documents show that the expedientes of the Tumacacori and Calabajas land grant were removed from the archives of Mexico in the month of February, in the year 1857, by an examiner of the Departmental Treasury, who was appointed for that purpose by Governor Pesquera.

The power of the Governor to appoint an inspector of the office of the Treasurer General and to suspend the Treasurer General is fully supported by article 12 of the law of September 21, 1824, which reads as follows, to wit:

"The General Government will invest the Governor of the State with powers so that in case of the death of the commissary or in other cases that may not admit of delay they may take the steps necessary to secure the money, documents, etc., and to place them in the charge of a person in whom the Governor has confidence, and even to make investigations of important acts for the discovery of valuables, giving an account without delay to the Government."

This law was still in force as not inconsistent with any other law on the same subject; but the power is expressly continued in force by the law of December 7, 1837, which gives the Governor power to suspend treasury officials, and to appoint inspectors as well as to personally inspect the Treasury Department.

Document No. 1 states that in order to conclude a report which the Governor asks from the Treasurer General's office it is necessary for the inspector to have before him the expedientes of the ranches of Tumacacori, Calabasas, Cocospera, and San Pedro d'Arivaca, which documents he hopes the Acting Treasurer will favor him with, and that they will be returned, and that said document, which is signed by both the Inspector Guitterrez and by Tapia, shall constitute a receipt for said expedientes. (See Record, p. 240.)

It will be noticed that it is the *expedientes* which are asked for and *not* the *titulos*. The reply is as follows, to wit:

"I have the honor of remitting to you, as per your request of the 8th inst., and for the purpose of concluding a report which His Excellency the Governor of State asks of you, *four expedientes of the measurements of the ranches La Cacita, Calabasas, Tumacacori, and San Pedro d'Arivaca*, not doing the same with that of Cocospera on account of having found in the archives of this office only the evidence of title in due form issued in favor of the natives of said place, as can be deduced from copy which I transmit herewith to you, which evidence was found in a book of Toma de Razon of lands which in 1833 was kept by the Treasurer General of the State."

I have quoted this translation in full from page 240 of the Record, partly for the reason that an important error has been made in the printed record of the translation of said document No. 2. On line 3 of said translation the word "for" appears, so that the document seems to state "for expedientes of the measurements" instead of stating "four expedientes of the measurements." In the original document No. 2 the words are "cuatro expedientes."

See Photographic Copy No. 2 between pages 238 and 239 of Record.

It will be noticed that this document states that the Acting Treasurer has transmitted "*four expedientes*" and *not four titulos* or any other number of *titulos*. The care with which the person writing the document states that he only sends a copy of a Toma de Razon entry as to the Cocospera grant justifies us in presuming, if such a presumption is necessary in the face of the express language of this document, that if the "titulo" instead of "expediente" of this grant had been transmitted he would have expressly stated that fact. His office was being examined by an inspector, and he was about to be removed on account of his defective bond, and he would have been more than ordinarily careful to protect himself when letting documents out of his possession at this critical period of his official life.

Another significant fact in this document is the recital that "*four*" expedientes have been transmitted. In naming the four, we find only the following, to wit: One, La Cacita; two, San Pedro d'Arivaca, and, three, Tumacacori Calabasas. It is a well-known fact, as is shown by the title papers of the 1807 grant, that the Tumacacori and Calabasas is one and the same grant, and that in 1807 but one expediente was made of it. The reference in the Sonoita grant is to the Mission of Tumacacori and Calabasas and not to the Missions of Tumacacori and of Calabasas.

On page 315 of Record we find a copy of the Toma de Razon entry of the Nogales grant, in which is the following language :

"Between the north boundaries of the rancho of La Cacita and those west of the Mission of Tumacacori and Calabasas."

This Toma de Razon entry was made on January 7, 1843, and not in the year 1845, as erroneously appears in the record. As late, therefore, as the date just mentioned the land comprised within this grant was referred to as the "Mission of Tumacacori and Calabasas" and not as the Missions of Tumacacori and of Calabasas.

Hence, it seems very clear to the writer that the transmitter of these expedientes had sent one expediente of the La Cacita ranch and one expediente of the San Pedro d'Arivaca ranch and two expedientes of the ranch of Tumacacori and Calabasas, making a total of *four expedientes*.

In no other way can we account for the fact that there were four expedientes.

We know that the archives ought to have contained the expediente of this grant which was made in the year 1807, and we also know that the archives ought to have contained the expediente of this grant which was made in the year 1814, and that therefore *two* expedientes of the Tumacacori and Calabasas ranch ought to have been in said archives. From the document under discussion it would seem plain that both those expedientes were in the archives and were transmitted to Guitterrez and Tapia on the 10th day of February, 1857.

Document No. 4 is as follows, to wit (p. 241):

"Don Toribio takes with him the following expedientes for which Don Eufemio Tapia must give receipt :

"Cacita, Tumacacori y Calabasas.

"Calabasas.

"Tumacacori.

"Aribay."

It will be noticed that in this document the ranch of Tumacacori and Calabasas is repeated twice. For what reason it is hard to divine, unless there were actually two expedientes of this grant of Tumacacori and Calabasas, and *by no other process of reasoning does this last document, No. 4, show less than five or more than three expedientes.*

In other words, in order to satisfy the statement contained in document No. 2, that "*four expedientes of the measurements of the Ranches La Cacita, Calabasas, Tumacacori, and San Pedro d'Arivaca*" were remitted, we must inevitably adopt the conclusion that there were two expedientes remitted of the ranch of Tumacacori and Calabasas, to wit, the one of 1807 and the subsequent one of 1844, as the only rational solution thereof.

EFFECT OF DOCUMENTARY EVIDENCE.

Counsel for the Government admit, at page 63 of their brief, that this correspondence of 1857 "*may have some tendency to show the existence in the archives at that time of the expedientes in the Tumacacori and Calabasas grant;*" but they attempt to weaken the effect of this admission by adding that, in their opinion, "it is not sufficient to meet the requirements of the sixth article of the treaty of Mesilla.

MOTIVE OF GOVERNOR PESQUIERA IN CAUSING REPORT TO BE MADE ON THIS GRANT IN 1857.

We have not only shown, therefore, that this grant was duly recorded in the archives of Mexico by that character of evidence which this Court held would be sufficient to establish the existence of a judicial record in case the same was lost or destroyed, to wit, by "something officially connected with it" and "which shows that it had been officially made," but the testimony in this case also throws light upon the object and purpose of Governor Pesquiera in causing an

examination of the expediente of this grant early in the month of February, 1857.

The witness Rusk Green testifies, at page 88 of the Record, that Mexican troops were still at Tubac, only about one mile from the home ranch house of the Tumacacori grant, in November, 1854, when he reached there; that Pesquiera came to Tucson and lifted the Mexican troops from that post in March, 1856; that he came there and paid off the troops, and had to pay them off to get them out of the country, as they refused to go otherwise; that he, Green, was in Tucson at the time, selling goods, and that the troops left there in March, 1856, and that Pesquiera lifted the troops from Tubac as he went by.

Mr. Carlos Velasco testifies, at page 50 of the Record, that Gandara, the original owner of this grant, headed a revolution in Sonora in April, 1856, and succeeded in establishing himself as governor; that Pesquiera at that time was in the frontier; that Pesquiera was inspector of the military colonies at the time; that Pesquiera raised troops in the frontier and marched on Ures, and that in beginning of August, 1856, Pesquiera laid siege to Ures, the capital of Sonora, and finally entered the town.

History tells us that Pesquiera took office as Governor on August 19, 1856, on which day he entered Ures, the capital of Sonora.

This is also shown by the documents already in evidence and from the testimony of Tapia, who was appointed by Pesquiera as provisional treasurer in the month of February, 1857, as appears from his testimony beginning at page 42 of the Record.

At page 51 of the Record Velasco testifies that the relations between Pesquiera and Gandara was very unfriendly in 1856 and 1857, and this can hardly be doubted from the facts already in evidence that Pesquiera had driven Gandara out of Sonora in the month of July or August, 1856.

Velasco proceeds to testify, at page 51 of the Record, that

he had a conversation with Pesquiera in the year 1872, and that, in recalling the events of former years, Pesquiera said—

“That he was very sorry that he did not confiscate *all* of the property of Gandara; that he had issued out a decree (to that effect); that he had not confiscated that on account of some consideration, but that he did wrong in not confiscating that, because if he had done so Gandara would never again have made another movement.”

Velasco proceeds to state that he personally knows that Pesquiera actually did take possession of the haciendas of Gandara in Sonora in the year 1856; that he took possession of them entire to place in them the forces he had under him and their horses, and that he made use of everything that was in the haciendas, such as horses and wagons, and that he sold all the grain that he could, and that “everything that he could he sold” (p. 51).

The witness Jesus Nunez testifies, at pages 77, 78, and 79 of the Record, that he was a soldier in the Mexican army under Pesquiera, and that he was at the rancho of Tumacacori and Calabasas with Pesquiera, who was the commanding general, and that Pesquiera took the sheep which were there belonging to Gandara and drove them to Imurez (which is a short distance across the line, in Mexico), and gave them to his soldiers to eat.

The exact date upon which this occurred is not stated by Nunez, but it was undoubtedly at the time mentioned by Rusk Green, in 1856, when Pesquiera lifted the troops from Tubac and was on his way to Ures to drive Gandara out of Sonora, and only a few months before Pesquiera ordered the examination of the expediente of the Tumacacori and Calabasas grant and at the time he was confiscating all of the property of Gandara in Mexico.

Just before starting the revolution in April, 1856, by which he became Governor, Gandara had secured from Aguilar a deed to this grant, which deed was publicly ex-

executed at Guaymas before the Judge of the Second Instant of that district, and it had been a matter of notoriety during the years 1851, 1852, 1853, 1854, 1855, and 1856, that Gandara was the real owner of this grant, and that he was openly and notoriously in possession of the same, and had thirty or forty families located upon it, as is shown by the testimony of the witnesses, Teodora de Troil, William de Troil, Peter R. Brady, Jesus Marie Elias, Charles D. Poston, Jesus Nunez, Concepcion Elias, Rusk Green, Peter Kitchen, Fritz Contzen, Antonio Ramirez, Jose Marie Peralta, and Jose Rodriquez, at pages 54 to 98 of the record.

At the time the proceedings took place, therefore, which are described in the documentary evidence of the record of this grant which we have just examined, Pesquiera, the Governor of Sonora, was attempting to cripple Gandara financially so that he would not be able to return to Sonora and cause any more trouble. Pesquiera had not hesitated to seize the personal property of Gandara which was on this grant and to confiscate the same and carry it into Mexico as late as March, 1856; and we have seen that Velasco testified at page 53 of the Record that "revolutionary parties would go in, and if they were parties from the opposite side that had pending cases they would immediately go to the archives and destroy every paper."

ANALYSIS OF APPELLEE'S CRITICISMS OF RECITALS IN TITULO OF 1844.

Counsel for the Government state in their brief, at page 59, that "the grant of 1844 appears to have been executed at Guaymas, April 19, 1844, at which time there was nothing in the archives indicating the extent of the lands which had been granted in 1807 to the pueblo of Tumacacori as fundo legal and estancia, and nothing appears to be in the archives to show the fact that Ignacio Lopez executed the conveyance of 1844."

At page 63 of their brief, counsel for the Government state :

" It is also quite clear * * * that none of the documents relating to the grant to the pueblo of Tumacacori of 1807 were in the archives in April, 1844."

And at page 19 of their brief counsel for the Government say :

" By these recitals it will be seen that the officer making this sale did not have either the expediente or the titulo of the Tumacacori grant of 1807, and it does not appear that he had any information as to where they were, consequently he did not know what the boundaries were, and the only information he seems to have had was generally as to the area of the town site and the estancia. It is apparent also that at that time there was nothing in the archives by way of record of the grant of 1807 from which any definite information could be obtained by Lopez as to this alleged original grant to the pueblo of Tumacacori."

It will be seen that counsel for the Government will not even candidly acknowledge the genuineness of the grant of 1807, to wit, the existence of the Mission of Tumacacori and Calabasas, although the title papers of the Sonoita grant mention this mission, and the record evidence of that grant is certainly fully established, and although the title papers of the Nogales grant also mention this mission as late as the year 1843, and the Toma de Razon entry (the only record evidence recognized by counsel for the Government) of that grant expressly names this mission grant as bounding it on the north or west, and although Special Agent Flipper testified that he believed it to be undoubtedly genuine.

The recitals referred to by counsel for the Government as having the above-mentioned effect read as follows, to wit :

" With the understanding, also, that just as soon as the original titles of said agricultural and grazing lands are obtained they shall be aggregated to the present ones, and

THE TRANSMITTAL AND DELIVERY of said original documents are considered as made and verified from this moment in favor of said party in interest, Don Francisco Alejandro Aguilar."

The learned counsel construes these words as meaning that the *expediente* of the 1807 grant, when received, should be aggregated to the *expediente* of 1844, whereas it is plainly apparent from this recital standing alone that reference was made to the *titulo* or testimonio of said grant of 1807, for we know that "the transmittal and delivery" of the original *expediente* was never in any instance made to the party in interest.

But counsel for the Government have separated these phrases from the other parts of the sentence in which they are found, so that the meaning which is given them by the context is to some degree obscured. As found in the title papers, the words quoted can have no other meaning than those which I have just given to them. By referring to page 14 of the Government Brief we find that the *titulo* also contains the following recital, to wit:

"The original *expediente* remaining deposited in the archives of this Treasury as perpetual evidence, with the understanding that when the original TITLES of Tumacacori and Calabasas are obtained they shall be aggregated to the present one."

Special Agent Flipper is too good a Spanish scholar to have ever translated any words in the original Spanish document "as original title," and he is too zealous a partisan of the Government to have done so if the words were capable of being interpreted to mean the "original *expediente*" instead of "the original *titulo* or testimonio."

In the translation of the *titulo* of 1844, which is contained in the Government Brief, on pages 10, 11, 12, and 13, we find the following additional recitals, upon which counsel based their argument, to wit:

" Whose areas, boundaries, monuments, and coterminous tracts are stated in the corresponding proceeding of survey executed in the year 1807 by the commission surveyor, Don Manuel de Leon, veteran ensign and late commandant of the Presidio of Tubac, *according to the information obtained in relation thereto at the instance of this Departmental Treasury*, said temporal farming and grazing lands being valued in the sum of \$500, as provided in Article 2 of the aforesaid supreme decree of February 10, 1842."

Then follows the proclamation by the public prior that the Treasury Department is going to sell this land, describing the land in almost the exact general terms which are used in the expediente of 1807, and proceeding as follows, to wit:

"As appears from the information obtained at the instance of said Departmental Treasury, from which it also appears that the original titles of grants [titulo or testimonio] and confirmation of said temporalities still exists," etc.

The words titulo or testimonio contained in the brackets are my own, for it may again be said that Mr. Flipper would never translate any Spanish words as meaning "original titles" if they meant anything else than the *titulo or testimonio*, which is given to the grantee.

The effect of the foregoing recitals, therefore, is simply that said Tumacacori and Calabasas grant, which is to be sold, pertains to the department of temporalities, "according to the information obtained in relation thereto at the instance of the Departmental Treasury," and that said lands have been valued at the sum of five hundred dollars by appraising them in the manner provided for in Article 2 of the decree of February 10, 1842.

And that "the areas, monuments, and coterminous tracts" of the lands which are about to be sold by the Treasury Department "are stated in the corresponding proceedings of survey executed in the year 1807 by the commission sur-

veyor, Don Manuel de Leon," etc., "as appears from the information obtained at the instance of said Departmental Treasury."

There is nothing whatever to indicate that this information was not obtained from the expediente of said Tuma-cacori and Calabajas land grant, and there is nothing to indicate that said expediente was not at that time in said archives.

The recital goes on to say that "from the information obtained at the instance of said Departmental Treasury"
* * * "it also appears that the original titles of grants (titulo or testimonio) and confirmation of said temporalities still exist."

The accuracy and proof of this last branch of the recital is fully demonstrated by the fact that said original titulo or testimonio is at this very time in the possession of the clerk of this Court and is open to the inspection of the justices of this Court, and its authenticity and genuineness have not been questioned by one syllable of testimony in this case.

The exact description in general terms of this grant which is contained in that notice of sale shows that the officer who prepared the notice of sale had access to either the titulo or the expediente of said 1807 grant at the time he prepared said notice of sale.

It is possible, however, that the expediente of said 1807 grant was not in Guaymas, at the place where this sale was conducted, at the time of said sale, in April, 1844.

In February, 1839, the capital of the Department of Sonora was at Ures, as shown by the letter of Jose Marie Mendoza of that date to the Secretary of State of the Department of the Treasury of the Republic. We find the capital still at Ures in the year 1856, when Pesquiera drove Gandara out of the country, and the archives were likewise still at Ures upon said last-mentioned date.

The testimony of Mr. Velasco, upon pages 53 and 54 of the Record, throws a little light upon this question. He

states that he does not remember that the capital of Sonora was ever in Guaymas; that "during the time of Don Jose Aguilar it was once in Guaymas, but I don't remember whether legally or not. During the revolutions they made the capital wherever they wanted to."

Mr. Velasco testified *that he knows the civil officials were in Guaymas in 1844 from many documents which he had seen, and that General Ignacio Lopez (the officer who made this grant) was a Federal officer and "was the officer of the Departmental Treasury of Sonora."*

See page 53 of Record.

On page 54 of Record Mr. Velasco testifies, upon a cross-examination made by Mr. Reynolds, that the archives of the General Government were never removed from Ures to Guaymas.

The report of Messrs. Flipper and Tipton shows that the officer who made this grant was the Treasurer General of the Department of Sonora during the year 1843 and during at least a part of the year 1845, as well as during other periods of time.

The fact that the archives of the General Government were never removed from Ures to Guaymas, and that the departmental civil officers were conducting the affairs of the government at Guaymas in 1844, at the time this sale was made, explains the recital in this titulo of 1844 that the facts in regard to this grant which are presented in those recitals "appear from information obtained at the instance of this Departmental Treasury." The information was doubtless secured from the archives at Ures by means of written correspondence. The fact that the archives remained in Ures while the business of the Departmental Treasury was being carried on at Guaymas, in said year 1844, furnishes an additional explanation of the absence from said largest book of Toma de Razon of any notes of titles which were issued in said year 1844. If those notes or Toma de Razon entries were made upon loose sheets of paper, it is more than likely

that those loose sheets of paper never reached the archives at Ures, but were destroyed or lost during one of the frequent revolutions.

The last entry in said book of Toma de Razon for the year 1843 is signed by Lopez on December 9 of that year, and fifteen entries signed by said Lopez appear in said book of Toma de Razon for the year 1843, ranging from January 26 of that year until the date just mentioned. These are the first times the name of Lopez appears as a Treasury official in said book of Toma de Razon. The very next entry in said book of Toma de Razon after the one of December 9, 1843, is that of the Tetacombiate grant, dated February 17, 1845. The next five entries in said book are also made by said Lopez in said year 1845. (See Supplemental Report of Messrs. Flipper and Tipton.) Lopez's name does not again appear in that book until the years 1847, 1848, and 1849.

It is fair to presume, therefore, that Lopez as Treasurer General was conducting the affairs of that office at Guaymas during the whole of the year 1844, and that the archives, including said book of Toma de Razon (provided that it had been sewn together in its present condition prior to that date), were still at Ures, and remained there, and we may presume that the Treasurer General's office was returned to Ures in January or February, 1845, and Lopez again commenced to make Toma de Razon entries of grants issued by him.

But Mendoza succeeded Lopez in 1845, and in this same year Mendoza made the entry in said book of Toma de Razon of the number of pages contained in it, &c., and to my mind this furnishes additional evidence that the loose sheets were then gathered up and sewed together by Mendoza.

In the case of the *U. S. vs. Arredondo*, 6 Pet., 744, this Court, in passing upon the question of the due performance of conditions subsequent by the grantee, said :

"Great allowance must be made not only for the disordered state and prevalent confusion in the province at the time of the grant, but until the time of its occupation by the United States. Though a court of law must decide according to the legal construction of the conditions and call on a party for a strict performance thereof, a court of equity on more liberal principles will soften the rigor of law, and though the party cannot show a legal compliance with the condition, if he can do it by *cy pres* they will protect him and save him from forfeiture."

So, also, in considering the question of the record of this grant, it would seem to be the duty of this Court to take into consideration the imperfect methods adopted at that period of time in the Mexican Government for preserving any authentic record of the acts of its officers in granting lands or of the specific portion of the public domain which had thereby been alienated. It must also take into consideration the distracted state of Sonora during that period, owing to frequent revolutions, resulting in a change of the officers who had charge of the archives, and also resulting, as is shown by the testimony in this case, in the destruction of many of the records through malice or a spirit of pure vandalism; and special allowance must be made upon this question of proof that a grant had been "duly recorded," in view of that principle of natural justice which declares that a *bona fide* purchaser for a valuable consideration ought not to be made to suffer for the failure of others over whom he has no control to perform their duties.

LIST OF 1855.

On page 60 of their brief, counsel for the Government say:

"Another very significant fact appears in the absence from the archives in 1855 of the grant to the pueblo of Tumacacori, made in 1807, and the so-called grant to Aguilar of 1844, at which time a list of the expedientes was made for

the Commissioner of the National Government under the celebrated decree of Santa Ana of July 7, 1854, so often referred to and discussed before this Court."

The only knowledge I have of the list of 1855 referred to by counsel for the Government, and in which he alleges that this grant does not appear, is the reference to the same in the official report of the condition of the archives or records of the titles to land grants in Arizona and similar grants in Mexico, which has often been referred to in this brief and which was made by Special Agents Will M. Tipton and Henry O. Flipper, of the Department of Justice.

The only information contained in that report in regard to it is on pages 2 and 3. These special agents state that the list was made on July 26, 1855, by the Treasurer of the Department and forwarded to the agent of the Secretary of Public Works in the Department of Sonora on the same day; that this list is a rough draft or borrador, but is signed by the Treasurer of the Department.

The special agents then go on to state that in said list are certain Arizona grants, which they enumerate, and that certain other Arizona grants which they enumerate, including the Tumacacori and Calabasas grant, are not in that list.

We are not told where this list was found by the special agents. "In compliance with your instructions, we examined the list referred to in your letter." If this list was found in the office of the agent of the Secretary of Public Works in the Department of Sonora, we ought to be told that fact.

If it was in the Treasurer General's office and was nothing but a rough draft or borrador, what evidence is there that it was forwarded to the agent of the Secretary of Public Works on July 26, 1855, or at any other time? Where did the special agents get the information, and what was the character of the information, upon which they make this last statement? We have already referred to the reckless-

ness with which they make statements in favor of the Government, notably the one on page 101, "There is absolutely no record of this grant (the Tumacacori and Calabasas) of any kind in the archives."

Besides the documentary evidence in this case relating to the Tumacacori and Calabasas grant, of which those special agents had notice, there was the Toma de Razon entry in the Nogales grant, dated July 7, 1843, stating that the grant was "west of the Mission of Tumacacori and Calabasas in Pineria Alta and in the district of San Ygnacio," and Mr. Flipper had full knowledge of that entry. How could he say, therefore, that there was "no record of any kind in relation to said grant?"

What weight can we give to their declarations, therefore, in relation to this list of 1855? It must be an exceedingly crude and rough document to receive such a description from Mr. Flipper when it seems to be favorable in its contents to the side of the Government. If found in the Treasurer General's office what evidence is there that it is the completed list which was finally sent to said agent, if such a list was ever sent?

The best evidence of what the list contains and of what it does not contain would be the list itself. It is not a record which was required to be kept in the archives, and although made by an official, it should have been put in evidence, and we should have had an opportunity to examine it and inquire into its history before it is used against us.

Fortunately we are not bound by any report made by Mr. Flipper against us without our having had the opportunity to cross-examine him, whatever weight this Court may give his statements as admissions against the Government.

In the case of *U. S. vs. Auguisola*, 1 Wall., 357, this Court said:

"The objection that the grant is fraudulent and void rests mainly upon the allegation of counsel that it is not mentioned in the list of expedientes known as Jimeno's Index. We say,

upon the allegation of counsel, for Jimeno's Index is not in evidence, nor was any proof offered of its contents, and under the circumstances of this case, if the fact were as alleged, it would not be entitled to much weight."

The facts in that case are substantially similar to the facts in the case at bar, and the comment of this Court just quoted applies with full force to this list of 1855.

If counsel for the Government had put this list in evidence, or even if it had been fully set forth in said report of Messrs. Flipper and Tipton, we might compare it with the lists of grants which are in the book of Toma de Razon and thus discover how many and what grants were set forth by the Treasurer General of the Department of Sonora in the year 1855 as being grants to which titles had been issued.

It would be interesting to know whether the Treasurer General of Sonora at that date complied with the request of the agent of the Secretary of Public Works for "a list of all expedientes of titles to land issued or pending from September, 1821, to date, by separating those upon which titles had been issued from those which were pending, and whether he made up a list for this first class by simply enumerating those which are found in the two books of Toma de Razon or by adopting the method pursued by Mr. Rochin, to wit, by examining each expediente to discover whether payment for the land had been made or title had been issued.

In the case of *U. S. vs. Auguisola*, 1 Wall., 358, this Court said :

"The United States have never sought, by their legislation, to evade the obligation devolved upon them by the treaty of Guadalupe Hidalgo, to protect the rights of property of the inhabitants of the ceded territory, or to discharge it in a narrow and illiberal manner. They have directed their tribunals, in passing upon the rights of the inhabitants, to be governed by the stipulations of the treaty, the law of nations, the laws, usages, and

customs of equity, and the decisions of the Supreme Court, so far as they are applicable. They have not desired the tribunals to conduct their investigations as if the rights of the inhabitants to the property which they claim depended upon the nicest observance of every legal formality. They have desired to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce forfeitures, but to afford protection and security to all just rights which they could have claimed from the Government they superseded."

LIST OF 1855 (CONTINUED).

The unreliability of this list of 1855 as proof that record of a grant did not exist in the archives of Mexico at the date said list was prepared is further shown by the fact that Special Agents Flipper and Tipton state at page 3 of their Report that among the Arizona grants which are not enumerated in said list is the "Aribac" grant.

At page 100 of their Report said special agents say :

"162. Aribac. (Arizona.)

"There is absolutely nothing in the archives concerning this grant except the entry in the book of Toma de Razon under the year 1833, on page 1 of leaf 13, as follows :

"On the 12th of July there was delivered to Captain Don Ignacio Elias Gonzalez the grant title, issued on the 2nd of July of the current year, for two sitios of land for raising cattle and horses, which is comprised in the place called Aribac, situate in the jurisdiction of the Upper Pima country, in favor of citizens Tomas and Ignacio Ortiz, residents of the Presidio of Tubac.

MILLA."

As the fact that title had been issued on this grant was specifically set forth in said book of Toma de Razon, no reason exists to excuse the fact that it was not enumerated in said list of 1855, as some of the other Arizona grants were enumerated in that list, and consequently it was not omitted because of the fact that it was located outside of the then existing boundaries of Mexico.

Not only did this Toma de Razon entry of the Aribac grant exist in the archives at the time said list of 1855 was made, but the expediente of said Aribac grant was like wise in said archives at that time, as this is one of the grants the expedientes of which were taken from the archives in February, 1857, by the order of Governor Pisquera, as appears from the photographic copies of documents (Record, pp. 238, 239. See translations (Record, pp. 240, 241).

The "San Pedro de Arivaca" grant, which is mentioned in document No. 2, is the same grant which is referred to in document No. 4 as the "Aribay," and is referred to in the translation of said document No. 4 as the "Aribac."

The letters "b" and "v" seem to be used interchangeably in all these Spanish documents, and in mentioning a grant by its name in any informal document it also seems to be customary to drop all but the last part of the name.

This is a curious fact, that all four of the grants whose expedientes were removed from the archives by the order of Pisquera, as shown by said document No. 4, are located close together. The Casita grant adjoins the Nogales grant, which has been before this Court, and which itself adjoins the Tumacacori and Calabasas grant. The Aribac grant is in the same neighborhood.

LOCATION.

THIS GRANT WAS LOCATED WITHIN MEANING OF GADSDEN
TREATY.

Counsel for the Government contend in their brief that this grant is void for the reason that it was never "located" within the meaning of said Gadsden Treaty.

In the case of *Hornsby vs. U. S.*, 10 Wall., 233, Mr. Justice Field says:

"As we have had occasion to observe in several instances, grants of the public domain of Mexico made by Governors of the Department of California were of three kinds—1, grants

by specific boundaries, where the donee was entitled to the entire tract prescribed; 2, grants by quantity, as one or more leagues situated at some designated place or within a larger tract described by outboundaries, where the donee was entitled out of the general tract only to the quantity specified; and, 3, grants of places by name, where the donee was entitled to the tract named according to the limits, as shown by its settlement and possession or other competent evidence.

"The greater number of the grants which have come before this Court for examination have belonged to the second class. They have usually designated the land ceded by the general name of the valley or locality where situated, with a clause annexed that the concession was limited to the specific quantity mentioned, and that the Magistrate of the Vicinage, of whom possession was to be solicited, should cause the same to be surveyed, and that any surplus existing should be reserved for the use of the nation."

We see from an examination of the California cases that these grants of the second class were in almost every instance gratuitous donations. We have also seen that in some instances the grantee pocketed his title paper and never attempted to take possession of his grant or to have the same located until many years after, when the land had become valuable by an influx of population and other property rights had grown up in connection with it. In many instances it is apparent that after securing the grant the original grantee abandoned the idea of expending any money to take possession of the same or to comply with the conditions specified in the title papers.

It was to obviate this mischief that the word "located" was inserted in the English version of the Gadsden Treaty; but we shall presently see that this word "located" or its equivalent was omitted from the Spanish version of that treaty in the original document.

It seems quite clear to my mind that this omission was partly due to the fact that no necessity for its insertion actually existed, for the reason that no grants of this second

class had ever been made by the Mexican Government within the boundaries of the lands then being ceded.

The testimony of Mr. Bonillas in this case and the letter of Jose Maria Mendoza, as Superior Chief of the Treasurer, to the Secretary of the Department of the Treasury, which has before been quoted in part, and the report of Special Agents Flipper and Tipton, as well as the fact that in no single-grant case which is now before this Court from Arizona or which has been tried before the Court of Private Land Claims has a single grant of this class been named, pointed out, or shown to have existed within said section of country, and the fact that no law of the State of the West or of the State of Sonora ever authorized a grant of this class to be made, all seem to conclusively establish the fact that no such grant ever was made by the Government of Mexico or by any State or Department having power to make grants within said section of country.

The method of making these grants by quantity within specified outboundaries differed radically from the method of making grants by specific boundaries which prevailed in Sonora during the entire period of its history down to the date of the Gadsden Treaty.

In Sonora all the grants of land were executed contracts of purchase instead of voluntary grants. In each instance the land, after certain preliminary proceedings, including a definite survey in every instance, was put up at auction and sold to the highest bidder.

Hence no grant was ever made without its having been "located" prior to the sale.

Webster defines "located" as follows: "To select or determine the bounds or place of; as, to locate a tract of land;" and "location," he says, in its judicial acceptation is "the marking out of the boundaries or identifying the place or site of a piece of land according to the description given in an entry, plan, map, and the like."

The Century Dictionary defines "to locate" as follows:

"To fix the place of; to determine the situation or limits of; as, to locate the site of a building; to locate a tract of public land by surveying it and defining its boundaries; to locate a land claim; to locate (lay out) the line of a railroad."

The grant of these lands under the titulo of 1807 was unquestionably a grant of the first class, to wit: One by specific boundaries, where the grantee was entitled to the entire tract described.

The grant of these lands by the titulo of 1844 was, it seems to me, just as unquestionably a grant of said first class. It is an ordinary rule of construction of deeds that whatever can be made certain by the reference contained in the deed shall be treated as already certain. The titulo of 1844 expressly refers to the survey which was made by Leon in 1807 and to the testimony of the witnesses contained in the titulo of 1807 in regard to other boundary points. Hence the titulo of 1844 must be read as if the titulo of 1807 had already been aggregated to and made a part of it in compliance with the recital contained in said titulo of 1844.

Said titulo of 1844 combines the qualities of both the first and the third classes of grants; as it is also a grant of a tract of land by a well-known designation or name, to wit, the Tumacacori and Calabasas Mission, and the settlement and possession of said tract of land to the boundaries as described in said titulo of 1807 was established in the trial of this case by competent evidence.

Hence it seems indisputable that this grant was "located," to wit, that its boundaries were fixed and determined, and that it was the grant of a specific portion of the public domain which had already been fixed and determined and marked and defined, so as to be separate and distinct and easily identified from other portions of the public domain at the time it was sold to Aguilar in 1844.

The Spanish version of the treaty of Mesilla, however, does not contain the word "located" or any equivalent expression, I am advised.

Hon. Y. Sepulveda, Secretary of Legation at Mexico, and Hon. Luis Mendez, President of the Mexican Academy of Legislation and Jurisprudence, in their letter from which I have before quoted, assure us of this fact.

In the case of *U. S. vs. Arredondo*, 6 Peters, 740, this Court held that the Spanish version of the treaty must prevail in construing the validity of grant titles under it. This Court said:

"The rules of law are too clear to be mistaken and too imperative to be disregarded by this Court. We must be governed by the clearly expressed and manifest intention of the grantor and not the grantee in private, *a fortiori*, in public grants."

APPELLANT HAS A GOOD AND VALID TITLE TO THIS GRANT
UNDER THE TITULO OF 1807 ALONE.

We have seen that the original grantees under the titulo of 1807 were still in possession of these lands as late as the year 1835, when the witness Jesus Maria Elias, who was born at Tubac, left Calabasas, at the age of seven years, to go to Tucson to reside. (R., p. 61.)

We have also seen that a clergyman appeared at the survey of the Nogales grant in 1841 to defend the boundaries of this mission, and (Record, p. 284) we find that on March 31, 1856, Manuel Maria Gandara, who had taken possession of these lands in 1851 and had occupied them continuously thereafter until said first-named date, had in his possession said original titulo of 1807.

The fact that he had been openly and notoriously in possession of these lands for more than five years, coupled with the possession of this original title paper, is sufficient evidence at this late day, and long after his death, when

lands are in hands of *bona fide* purchasers for value, to warrant the presumption that these lands had been conveyed to him for a good consideration prior to September 1, 1853, by the parties who then owned said lands under said titulo of 1807.

Under the laws of Mexico down to the date of the Gadsden Treaty, the mere delivery of the title papers or the placing of the purchaser in possession of the property was a sufficient transfer of the dominion of the seller over the real estate sold.

In a very valuable brief prepared by Mr. Byron Waters and on file in the case of *Hearst vs. U. S.*, now pending before the Court of Private Land Claims, I find the following statement made in an opinion written by Hon. Y. Sepulveda, Secretary of Legation at Mexico (formerly one of the Justices of the Supreme Court of California), and Hon. Luis Mendez, President of the Mexican Academy of Legislation and Jurisprudence, to wit :

"The transfer or delivery of the thing sold might be a material delivery or a symbolical one. The first consisted in the seller placing the purchaser, in fact or materially, in possession of the thing ; the second was affected by the mere delivery of the title to the property. And on this symbolical delivery there is in the old Spanish codes, which were in force in 1853, a most interesting law, which we will copy. Law VIII, title 30, partida 3d (Code of the Siete Partidas), says :

" 'DANDO ALGUN OME HERADAMIENTO O OTRA COSA QUALQUIER APODERANDOLE DE LAS CARTAS POR QUE LA EL ONO, O FAZIENDO OTRA DE NUEVO, E DANDOGELA, GANALLA POSSESION MAGUER NON LE APODERE DE LA COSA DADA CORPORALMENTE.'

" (Translation :) 'If any gives a hereditament or any other thing by giving the title papers by which he holds it, or making a new one and giving it, he acquires the greatest possession, although he does not give corporal possession.' "

On this point the official circular issued by the Minister of the Interior of Mexico on May 25, 1838, and approved by

the President, found on pages 1021, 1022, 1st vol., *Galvan's Coleccion de leyes y decretos*, and also on page 557, 3d vol., *Comp. Laws of Mexico*, seems absolutely conclusive, as follows, to wit :

" It must be principally noted that there are in force all such laws as are not openly inconsistent with the prevailing system, and unless they are found to have been expressly repealed by any other subsequent disposition this rule also holding good in regard to those laws which were decreed (passed) in the very remote epochs and under the different forms of government which the nation has had, and that therefore the courts and other authorities daily transact their various duties under the existence of the laws of the Cortes of Spain or the laws of Partidas and Compilation as long as this disposition is not repugnant, more or less, to the form of government in which they were sanctioned."

It must be presumed that said Gandara came honestly by this titulo which we find in his possession as early as March, 1856, as the law never presumes crime, and his possession of the same in any other capacity than that of being its owner is inconsistent with his open claim of title under his notorious possession of the lands for such a long period of time prior to that date.

If the titulo of 1844 did not convey title to Gandara or his trustee, Aguilar, it follows that the grantees under the titulo of 1807 or their successors in interest were still the owners of these lands and could resume possession of the same at any time prior to the lands being denounced by a prospective purchaser and sold by the Government. As the lands had not been denounced prior to the Gadsden Treaty, it is clear that this Government acquired no title to the same by virtue of said treaty as against the owners of said lands under said titulo of 1807.

No Toma de Razon book for the year 1807 exists in the archives of Mexico, and besides the evidence of the fact that the expediente of 1807 was still in the archives at the

date fixed by the Gadsden Treaty, the Toma de Razon entry of the Nogales grant, and the expediente of said grant show that the Mission of Tumacacori and Calabasas did exist as late as the year 1841, and the expediente of the Sonoita grant likewise shows that it did exist as early as the year 1820. See Toma de Razon entry of Nogales grant (Record, p. 315), where it erroneously appears that the entry was made January 7, 1845, instead of January 7, 1843, the true date.

POINT III.

Can the grant be located upon the earth's surface from the calls of the title papers or by the testimony of witnesses as a well-known place?

PROPER METHOD OF SURVEYING A MEXICAN GRANT.

The only witness on the part of the Government, as has already been stated, was Henry O. Flipper, a special agent of the Department of Justice, who admits (R., p. 205) that he claims to own 160 acres of the best land upon this grant. He further admits, upon cross-examination (R., pp. 226, 227), that he made a report upon this Tumacacori and Calabasas grant in September, 1890, for a lawyer residing in Washington, named "Judge Le Barnes," who had been employed by the squatters on the grant; that in this report said Flipper stated under oath that he believed that this grant was genuine, and that the only way you could defeat it was by showing indefiniteness in the boundaries, and that it would be necessary to depend on the indefiniteness of the description of the survey and the consequent impossibility of locating the grant on the earth's surface.

Said Flipper further states in said sworn report:

"I am of the opinion that the title is genuine, notwithstanding it is obscure, indefinite, and defective. I arrive at this conclusion the more readily because I know that all or

nearly all the titles issued by the Spanish authorities which I have examined are equally obscure, indefinite, and defective." (R., p. 227.)

Upon cross-examination (R., pp. 226, 227) he admits that he still believes said grant to be genuine, and that he still endorses the facts stated in the lines just quoted.

Later on we shall see that this witness under cross-examination identifies and acknowledges the correct location of every single monument called for in the title papers of this grant. We shall see that his testimony upon cross-examination is in some instances diametrically opposed to the testimony given by him upon his direct examination. The rigor of cross-examination compels him to make flat contradictions and admissions.

Mr. Flipper came upon the stand as an expert, stating that he had had twelve years' experience in surveying land grants in Mexico (R., p. 206). He admitted under cross-examination that these twelve years of experience could all be boiled down into a period of only three or four months' actual service in the field as a surveyor, and that the remainder of the time was expended by him in doing office work, in the translation of title papers for a surveyor who did not understand a word of the Spanish language, and who attempted to locate these grants in Sonora from the translations which were made by said Flipper (R., p. 214.)

Mr. Flipper admitted that he had examined the title papers of more than 2,000 Mexican grants, being all the grants in nineteen counties of the State of Chihuahua, and that all or nearly all of them were equally as obscure, indefinite, and defective as the title papers of this grant. (R., pp. 207, 227.)

Mr. Flipper also admitted that in running surveys in Mexico it was very rarely that either the course or the distance called for in the title papers agreed with the actual course or distance upon the ground. (R., p. 213.)

He testified that he had assisted a Mr. Glenn in surveying about 20 grants which were designated upon a map produced by one of our witnesses, Mr. Ignacio Bonillas, and that three or four months' service in the field as a surveyor was mostly expended in making these particular surveys.

It appears that Mr. Bonillas had afterwards surveyed all of these grants on account of protests on the part of the owners of them, growing out of the defective surveys which had previously been made by said Flipper and his associate Glenn; and Mr. Bonillas produced in court the original field-notes of all of the surveys made by him within said lot 4, and likewise a map of the surveys which had been made by said Flipper and Glenn within said lot 4.

In testing the credibility of said witness, Flipper, as well as his knowledge as an expert in surveying land grants, I pressed him to state a single monument of a single grant in all of the twenty or more grants which were included in said lot 4, and which he testified he had assisted in surveying; but his memory completely failed him, and he was not able to state a single monument to which he had gone in all of those grants. It can hardly be doubted but that this failure on the part of the witness was due entirely to the fact that those field-notes which had been made by Mr. Bonillas were on hand with which to cross-examine him as to his knowledge in regard to such a monument. (R., p. 215.)

The moment he was asked to state any grant which he had ever surveyed outside of lot 4 his memory returned to him and was as bright and as clear as the noonday sun. He immediately gave the name of a grant which he felt positive Mr. Bonillas had never surveyed, and he could distinctly remember the calls, courses, distances, and descriptions of each and every monument it contained, although this grant was surveyed by him only a short time after he assisted in making the surveys of said grants in lot No. 4.

The principal witness upon the question of the location

of the boundary of this grant on the part of the appellant is Mr. Ignacio Bonillas.

Mr. Bonillas was born in the District of Magdalena, in the State of Sonora, Mexico, and is still a citizen of that country. He was educated in his native town up to the time he was twelve years old, and then went to Tucson, where he attended the public schools. He taught in the public schools of Tucson for six years while preparing himself to attend college in the East. He graduated from the Massachusetts Institute of Technology, in the city of Boston, and took what is called the summer course in the University of Harvard in addition. He graduated as a mining engineer and surveyor and has been actively engaged in making surveys of land grants, both in Sonora and Arizona, since the year 1883. (R., pp. 102, 103.)

He has held many positions of honor and trust in Sonora, and was mining inspector of the district of Magdalena and mayor of the city of Magdalena for two terms, and was afterwards prefect of the district of Magdalena for three years, and was the mining deputation for the same district, and when the mining deputations were abolished he was appointed by the President of the Republic as the mining agent for the district of Magdalena, and he also held the appointment for the State government as the official appraiser of mining and milling machinery and an appointment from the minister of public works as agent of commerce and agriculture, besides holding other small positions.

Mr. Bonillas testified that he had been studying Spanish all his life, and his testimony, as it appears in the record, demonstrates that he is a cultured gentleman of superior ability and intelligence. Both the substance of his testimony and the manner of his testifying are in marked contrast to that of the special agent from the Department of Justice, who was the only witness on the part of the Government.

Mr. Bonillas stated that since the year 1883 he has sur-

veyed about one hundred private land claims within the borders of the present State of Sonora, and that each and all of his surveys have been approved and accepted by the Government. (R., p. 104.)

Unlike Mr. Flipper, he produced upon the witness stand the original field-notes and maps and each and every grant that was ever surveyed by him, and invited an attack upon the correctness of the same by the experts for the Government, including the Hon. Matt G. Reynolds, who is himself an educated surveyor.

Mr. Bonillas frankly stated at the beginning of his direct examination that the method pursued by him in surveying Mexican land grants was, to use his own language, as follows, to wit:

"When I first commenced to make land-grant surveys I did like almost all engineers did; I wanted to follow exactly the calls of the title papers by trying to find the monuments by courses and distances given in the field survey. I found that that did not work at all and I was losing time, and I lost a great deal of time that way, so I afterwards tried" (interrupted). * * * "I afterwards found the best way to make these surveys, not to lose time, but to save work, was to get people who were well informed and well acquainted with the topographical features of the country where the land grants were located, and, as in the documents of the titles of these grants they are generally places named that are well known, I would try to inform myself from people who were perfectly familiar with the localities to ascertain where these places were and so ascertain where the monuments and boundaries called for were." * * *

"Perhaps in a thousand or more cases where I have had to investigate the courses and distance of lines I have found five or ten that agreed with the calls of the title papers in courses or distances, and all the balance did not agree." * * *

"The quantity of land that was called for in the title papers, as compared with the actual quantity as shown by these surveys, varied very much. In all my experience in surveying land grants I know but one or two cases where there was a smaller area than the title called for. The gen-

eral cases—a great majority, I might say—there were great excesses of land inside of the monuments over the areas called for in the title papers. I will give you some instances from my books if you desire.” (R., pp. 104-’5.)

Mr. Bonillas then produced his original field-notes of the Quitaca land grant, and testified that the title calls for about thirteen thousand acres, and that he found about thirty-four thousand acres inside of the monuments; that the monuments are very well known, very well established, and that he found there was an excess of 21,670 acres in said grant, and that the government of Mexico acknowledged the title and issued a new title for the excess land that was inside of the monuments.

As to the courses, Mr. Bonillas stated that the center of the Quitaca land grant is established at the old ruins of Quitaca, which is a very well-known place in the valley of Quitaca. The title says then run north one hundred and twenty-four cords to the north center monument. Mr. Bonillas found that the course was north 14 degrees and 23 minutes west instead of north, and that instead of being 17,037 feet, the distance called for, it was 31,730 feet. To the south they say then run along the valley, along the road; they called that south. Mr. Bonillas found that course to be to the center from south center marked south 37 degrees 57 minutes, that much out of bearing. They called for 150 cords, or 20,625 feet, but he found there 26,268 feet—not a great difference.

The east center monument was established in a very well-known place and is itself a very well-known monument. It is said to be 15 cords to the east, and the title is so clear that it tells you how to go to the monument. You follow a ridge from the center monument and go to the center of the ridge, and there is the east center monument.

Mr. Bonillas says :

“I followed those directions, and instead of 2,074 feet, which the title calls for, I found the monument 22,077 feet.

The course is said to be east, and I found it north 38 degrees 39 minutes east." (R., p. 105.)

Mr. Bonillas next produced his original field-notes of the Alamo de Sevilla grant. This grant called for four sitios, or about 17,354 acres. Mr. Bonillas found that this grant contained considerable more than 100,000 acres. The center monument was very well known, being on the highway. The north center monument was said to be two leagues, or 27,480 feet, from the center, and he found it to be 65,034 feet from the center. (R., p. 106.)

Mr. Bonillas next produced his original field-notes of the Cinega de Heredia grant. The title calls for 17,207 acres, and he found within the monuments 99,322 acres, or an excess of 82,315 acres. (See Record, pages 105 and 106.)

In explanation of the variation which he found in these surveys, Mr. Bonillas stated :

"The explanation is they never used the proper instruments for making any surveys, and in fact they never took the great pains in making the surveys. The land was not worth much and anybody could get any land they wanted, and in making the survey the people who made the surveys were people who were not competent at all to make surveys, as a general thing, and they would take the topographical features of the country and write a description of what they did or intended to do. For instance, if a valley run north-east and southwest, they would establish a center point for a starting point, and to the north or northwest they would call that north, and the opposite direction, following the valley, they would call south, and towards the right hand, at about right angles to the course of the valley, they would call east, and in an opposite direction west, and as in the mesa Quitaca to the east the land was very good and they take much of it, and in this case they went to the foot of Cananea Mountains to establish the east center monument, and yet they say only 15 cords. On the other side it is not so good—it is not good at all—and they go to the Puerta of the Quitaca, which is a point very well known on the trail, and right on top of the puerta they establish a monument only about five

or six hundred feet, and yet they say 15 cords also. In one case they took all the good ground on that side, and on the other side, where it was not good, they took just what they wanted." (R., p. 106.)

Speaking of a grant, this Court, in *Billings vs. U.S.*, 2 Wall. 449, said :

"Perhaps the province of California at that time could not furnish a man capable of making an actual survey."

Counsel for the Government have criticized Mr. Bonillas very severely for his survey of this grant; but this frank statement on the part of Mr. Bonillas is a complete answer to all these criticisms.

At pages 83-87 of the official report of Special Agents Tipton and Flipper on the condition of the archives or records of the titles to land grants in Arizona and similar grants in Mexico we find an official letter from José Marie Mendosa, as the Supreme Chief of the Treasury of the Department of Sonora, dated February 23, 1839, and addressed to the Secretary of State and of the Department of the Treasury of the Republic.

This letter begins as follows, to wit :

"MOST EXCELLENT SIR: One of the sources of public revenue in this department is that from the compensation and grant of lands for breeding cattle and horses, and is that which from the time of the extinguished intendancies of the special government up to the present has been and continues to be extremely enormous and laborious because of the innumerable registries made by breeders of the immense tracts of public lands which this department has, because of the large number of grantees who appropriate considerable excesses of sitios which are wanted by breeders who need them and defended by them who are in possession of them, and said excesses arising from the fact that ancient surveyors, from ignorance or bad faith, to measure two sitios measured four, and to measure that number measured eight or more sitios," etc., etc.

In his testimony in this case Mr. Flipper labored to demonstrate that in order to survey "one league to each wind" he would commence at a point and run one league east to a certain point, and from that last point at right angles south to another certain point, and from that last point west at right angles to another certain point, and from that point north to the original point of beginning.

At Record, page 222, however, Mr. Flipper admits that if a title paper states that you should start from an initial monument and measure one league to each of the four winds he would measure one league from that center towards each of the cardinal points of the compass, and that under the Spanish rules for surveying he would then run parallel lines through the opposite cardinal points and thus secure a square containing four square leagues instead of one square league.

Mr. Bonillas stated that in surveying a fundo legal or ejido on a square for a town it was customary to start at the church door, as a center and initial point, and to survey one league toward each wind in the mesa toward each of the cardinal points of the compass. (R., p. 131-2.)

On pages 55 to 59 of their brief in this case counsel for the Government have kindly produced further evidence in substantiation of the correctness of the statements of Mr. Bonillas. They there show that both Galvan and Escriche, the well-known Spanish authorities, lay down the rule that in order to survey a sitio it is always proper to start at a center as an initial point and to measure one-half a league toward each of the cardinal points, and to then run parallel lines through those opposite cardinal points, thus securing a square sitio.

In view of these rules laid down by Galvan and Escriche it is easy to understand how the simple, uneducated Indians of Sonora, in order to survey two square leagues, invariably adopted as a center the point at which the petitioner prayed for his survey to be made, and thereupon measured from

that point two linear sitios toward each of the cardinal points, thus measuring four square sitios instead of two, as stated by Mr. Mendosa in his letter.

No person who has examined even half a dozen of the title papers of Mexico private land grants that were made prior to said year 1839 can entertain a shadow of a doubt but that it had become an invariable rule and the uniform usage and custom in surveying two square leagues of land to start at a center point, where an initial monument was placed, and to thereupon measure two linear leagues toward each of the cardinal points of the compass, and in measuring four square leagues it was the uniform custom to start at such a center or initial point and measure four linear lines towards each of the cardinal points of the compass.

Not only was the method which was pursued by the ancient surveyors through ignorance, or possibly in some few instances by bad faith, but this custom was uniformly followed in all the surveys or grants which were made in the State of Sonora for many years after said letter was written by said Mendosa, and, as far as the knowledge of this writer extends, that custom was not altered or changed until after the adoption of the new constitution of 1856, when the National Government resumed control of the vacant public lands of the Republic.

No honest and intelligent person can take two or three of the title papers to private grants in Sonora and go upon the ground and examine the calls in said title papers and compare them with the natural landmarks describing the places where the monuments were put without immediately perceiving the exact and literal correctness of each and all of the statements made by Mr. Bonillas.

The investigator will then see at a glance that these ignorant surveyors had no conception of proper courses or distances, and that, although they religiously recited in the title papers that they scrupulously measured a particular number of cords in a certain direction, it is evident that no

such measurement was ever made in every instance. On the contrary, the petitioner always knew the exact land which he needed and which he desired to purchase for the Government, and the surveyors invariably selected one or two points for cardinal monuments from which the entire grant could be viewed and accurately described.

While deficient in knowledge of the modern methods of surveying, and even of the rudest method ever adopted in this country, those ignorant people were perfect in the art of describing natural landmarks so that the most inexperienced person could not fail to be convinced that he had found the exact point described when he arrived upon the ground. The writer was astounded by the remarkable precision with which such natural landmarks are described in all of the title papers which he has examined and has had an opportunity to compare with the monuments and places called for upon the ground.

Such a thing as a grant of a limited quantity of land within specified outboundaries was absolutely unknown in the State of Sonora, and in his laborious investigations the writer has failed to find a single instance of any such grant. If these innumerable mistakes in surveying had occurred through ignorance or even through bad faith on the part of the surveyors in the United States, there would have been no possible way of correcting or reforming the titles to the grants, under our system of government, except by the United States going into its courts as a plaintiff in innumerable suits in equity, and then the Government would have been bound to clearly prove the mistake or the bad faith on the part of the surveyor in each and every instance in order to reform or revise the corresponding title.

We have seen, however, that in Mexico the courts have no jurisdiction to reform or annul titles to land, and that the political arm of the Government has retained this power in its own hands. We have also seen that the judicial arm of the Government in Mexico has no power to declare an

act of Congress unconstitutional, but that the power to determine this question lies in Congress itself.

Hence when the National Government of Mexico resumed control of the vacant public lands of the State, and the new and more permanent Government began to seriously consider the question of adopting some system of public land surveys which would enable it to know what portion of the public domain still belonged to the Government, it naturally directed its attention to the innumerable and almost uniform mistakes which had been made in the surveys of grants which were concededly sold as grants by specific boundaries, but which almost invariably contained a much greater quantity of land than had been paid for at the ruling rate by the grantee. The legislative power of the Government thereupon determined to correct these mistakes and to reform these titles at the expense of the grantees and owners of the lands, and to thereby secure at the same time a survey and map of its own remaining vacant public lands.

In doing this, however, the legislative arm of the Government did not pretend that any of these grants had originally been grants of a limited quantity within specified outboundaries, or floating grants, as they are commonly called. On the contrary, the title of the grantee to the boundaries as specified in his title papers was distinctly and specifically recognized, and he was given the absolute and unqualified right to retain all the lands within said specified boundaries by paying to the Government the difference in price between the quantity originally paid for by him and the quantity contained within said boundaries.

This was in effect the equivalent of such a decree as might have been rendered by a court of equity in this country upon a suit by this Government to reform a title to a grant of land which had been made under similar circumstances and in a similar manner, and it was no more and no less.

They recognize both the legal and equitable rights of the

grantee by securing to him all of his improvements which were on the lands and by permitting him to pay for the lands which were in excess of the quantity originally paid for by him at a price not in excess of its original value at the time of its original purchase by the original grantee.

In the courts of the United States we can hardly doubt but that the Government would have been held, under similar circumstances, to have estopped by its own laches, whether any considerable length of time had elapsed after the grant was made and before suit was instituted to reform the title by the Government. (See *U. S. vs. Hancock*.)

We have seen that the National Government of Mexico was apprised of the fact that these mistakes in surveys were being constantly made by its officers as early as the year 1839; and the act of the Mexican Government in compelling innocent grantees and their *bona fide* transferees to pay for these excesses of quantity after a lapse of from twenty-five to one hundred years does not strike the ordinary mind of the legal fraternity in this country as either just or equitable.

If these were grants of land by specific boundaries at the time they were made they are still that character of grants, and no legislation by the Mexican Government since the date of the Gadsden Treaty can in any way affect or change that character. The only question remaining, therefore, is, What remedy has the United States and can it reform one of these Mexican grant titles in these proceedings? I shall leave the Court to decide this question in the consideration of some grant where it may need an answer, as it does not require one in this case, for these lands were not appraised by quantity at the time of their sale to the predecessor in interest to this appellant in 1844, and the original grantee paid for all the land appraised, as well as for all the land described and sold to him.

At page 50 of their brief counsel for the Government say :

"The result of the examination-in-chief of Mr. Bonillas, a summary of which has been attempted, reflects more credit upon his ability than it does upon his candor."

At page 53 of their brief counsel for the Government, in referring to Mr. Bonillas, say :

"In commenting upon his testimony it may be said that as a surveyor he was equal to the emergencies demanded of him by the grantees."

It is a significant fact which I shall leave to Mr. Reynolds to explain that Mr. Bonillas was employed by him to investigate the title of the Soproi grant, as an expert witness on the part of the Government, a few days after the close of the trial of this case, and the record in the case of *The Soproi Land and Mining Company vs. U. S.*, No. 277, now on appeal before this Court, shows that Mr. Bonillas did testify as a witness on the part of the Government in said case, and also shows that Special Agent Henry O. Flipper was not used as a witness by the Government in said case.

It is suggested by counsel for the Government that no monuments constructed of mortar and stone were found upon this grant, but Mr. Bonillas testified at pages 142 and 143 of the Record that not more than one or two per cent. of all the monuments he ever visited or saw in the State of Sonora were built of mortar and stone or consisted of anything other than a pile of stones similar to those which we find at the points designated as the sites for monuments on this grant.

Mr. Flipper does not attempt to dispute the correctness of this statement on the part of Mr. Bonillas and does not testify to the fact that he ever saw a single monument of mortar and stone during his labors as a surveyor in Sonora.

The counsel for the Government, at page 51 of their brief, say :

"It is clear by the testimony of Colin Cameron, more interested than Mr. Bonillas in sustaining this and every other

private land grant in Arizona, and who has by his testimony been instrumental in the reconstruction of more monuments than were destroyable by all the Apaches that ever run over the country, that he dare not attempt to sustain the ancient origin of a number of Mr. Bonillas' monuments."

This attack on Mr. Colin Cameron is not justified by a single syllable of testimony in the record of this case.

At Record, p. 99, Mr. Cameron testifies that he has no interest, directly or indirectly, in this grant, and at Record, p. 161, Mr. Cameron testifies that the only place he ever piled up any monument has been at the place where the calls of the expediente did not say that there was a monument, and that he piled up stones at such places to mark the particular point that we had taken, according to our construction of the calls of the expediente in connection with the natural landmarks. Mr. Cameron adds that he never piled up any stones in the same way anywhere else.

Mr. Cameron frankly states, however, at other places in his testimony and upon his direct examination that he did take some of the loose stones which were lying around the base of the monument, which is located at the place known as the Cienega Grande, and put them on the top of said monument, so that the monument could thereby be seen from the public road, which runs close by it.

BOUNDARIES OF GRANT.

ANALYSIS OF TITLE PAPERS.

In the other grant cases from Arizona this Court has been confronted with the important and difficult question whether the grant was intended to be one of quantity, afterwards to be located within certain specified outboundaries, or whether it was a grant by specific boundaries, containing a greater area, however, than that mentioned in the title papers.

This question is entirely eliminated from the grant now before this court.

In the original grant, which was made to the community of Indians of the Mission of Tumacacori in the year 1807, four of the principal natives of said pueblo of Tumacacori petitioned for a new title to certain lands which had formerly belonged to said mission and Indians, the ancient title to which had been lost. They requested that the lands necessary for a fundo legal or farm and an estancia or stock ranch be conceded to them, "with the understanding that the four leagues, one toward each wind, on account of the farm are to be marked out to us and are to be measured in a proportional and equitable extent in the direction that we may desire, at our discretion, for the just and prudent end of including within said four leagues such lands as are suitable for sowing purposes, and with the understanding also that in relation to lands that are to be given as an estancia (or stock ranch) they are to include the post Guebabi and its appurtenances, as well because this land is the most suitable for the stock of their Mission of Tumacacori and offers the best advantages for the increase of the same as because said Guebabi has been considered the property of said Mission (of Tumacacori);" and petitioners also requested "that there be included in the said sitios the post or place named 'La Boca del Potrero,' that being useful to them from the fact that it is situated near their mission." (R., p. 266.)

These four principal natives state that they make this petition for themselves and in the name and representation of all the natives of the community of the Republic of Tumacacori, because those four principal natives (Felipe Mendoza, José Ignacio Arriola, Ramon Panplona Jabier, and Ignacio Nedina) are then present in the capital. (R., p. 265.)

This petition was written and signed for them by an attorney or notary public named Ignacio Diaz del Carpio, and was filed at Arispe, the capital of Sonora, in the office of the intendente, on December 17, 1806; and on said day the

intendente appointed and directed Don Manuel de Leon, the comandante of the adjoining military post of Tubac, to make the survey of said lands, and directed him to "measure to said natives one league toward each wind or the four leagues where it may best suit them of the best lands adjoining their pueblo, without prejudice to third parties, ceding for this purpose the colindates, if there should be any; and besides the said four leagues there should be adjudicated to them an estancia for stock of the larger kind, which shall include at the most two sitios in the place most convenient to those natives." (R., p. 267.)

On December 23, 1806, another petition was filed with said Don Manuel de Leon, the person who had been designated to make said survey, and this petition was signed by another attorney or notary public named Fray Narcisco Gutierrez, who filed said petition at the request of the Governor, Juan Legarro, and of the natives of said Mission of Tumacacori.

This petition is dated as having been executed at Tumacacori, and in it the said "Juan Legarro, as Governor of the Mission of Tumacacori, for himself and in representation of all the community of this mission," states that he, said Juan Legarro, "clearly and evidently knows that this Mission (of Tumacacori), in the direction of Guebabi, is bounded by the rancho of Romero, the monuments of which still exist beyond the Yerba Buena, at which place also exists a corral in which rodeos were held by our mission, and on the Potrero side, the measurement reaching to the end of the marsh (cienega), and learning from Don Manuel Carrera that the papers had been in his possession, and that these sitios had been in years anterior purchased with the money of the common fund of the mission and natives, and that these papers are lost." (R., p. 272.)

Counsel for the Government find something peculiarly significant in the fact that said four principal natives stated in the petition, which was prepared for them at Arispe, sev-

eral hundred miles away from Tumacacori, and in the absence of said Governor Juan Legarro, that they (said four natives) did not know the exact boundaries of the lands belonging to said Mission of Tumacacori, whereas said Governor Juan Legarro states in his petition, which was afterwards filed at Tumacacori, that he does personally know where certain of said boundaries of the lands belonging to said Mission of Tumacacori are located. I fail to see anything astonishing about this fact.

The amended petition which was filed by said Governor of the Mission of Tumacacori prays that said surveying officer "may be pleased to hear and take the sworn testimony of the Romeroes, Apodacas, Baes, and other old residents, who are acquainted with the facts stated," in said petition. (R., p. 272.)

Thereafter and prior to the survey being made by said comandante of Tubac, Manuel de Leon, the testimony of the witnesses named in the petition of said Governor was taken before said Manuel de Leon.

The witness Apodaca states that he is a resident of Santa Cruz, which is a well-known town of considerable size still existing at a distance of about twenty-five miles from this ranch, within the Republic of Mexico. This witness stated that he owned an interest in the rancho of the Romeroes; "that said Mission of Tumacacori is bounded on the south or where Guebabi is situated by said rancho of the Romeroes; that he knows that at present exist the monuments which divide the lands of Tumacacori and the Romeroes, said monuments being placed beyond the place called Yerba Buena; that in the direction of the Potrero he knows and swears that said monuments were placed above the large marsh (Cienega Grande); that in the direction of the east the monuments were placed at the Cañon of Sonoita upon a gradually sloping mesa." He stated that he knew these facts "because he had been present at the rodeos of said mission; had heard the ministero of said mission say so,

and had also heard the late Manuel de la Carrera say that if any doubt should arise as to the lands of said mission—these of the interested parties, those of the Romero, Santa Barbara, and other places situated in the direction of Guebabi or in the valley of the Potrero—that if they would come to his house they would find any documents necessary;” that he knew that said Manuel de la Carrera “had been judge for many years and had collected all the papers in relation to the lands or sitios and took them with him.” The witness stated that he was seventy years of age, and hence it appears, inferentially, that he must have known the boundaries of this Mission of Tumacacori for a period of time running back almost to the date of its foundation by the Jesuits. (R., p. 273.)

It is important to notice that he was one of the owners of adjoining lands upon the south, and that the *south* monument, whose location he states was beyond the Yerba Buena, was the *dividing* monument between his own lands and those of this mission.

On the 7th day of January, 1807, Juan B. Romero, a sergeant of the company of Presidio of Tucson, and who was then a resident of the Presidio of Tubac in some official capacity, testified before said surveying officer that he knew the boundaries of the Mission of Tumacacori “since childhood; that his late father took him as a child and told him that the Mission of Tumacacori was bounded by the ranch of Buena Vista, belonging to them (that is, to the declarant and his father), and that the landmarks of the Tumacacori are situated above the Yerba Buena, and that Don Manuel Carrera, as political judge of that jurisdiction, assured him that he had in his possessions the papers in relation to this place and other places in the neighborhood.” (R., p. 274.)

It should be noted that the ranch of the Romero spoken of by the preceding witness and the ranch of Buena Vista

are one and the same ranch, the last-named witness being one of said Romeros and one of the owners of said ranch.

On the 9th day of January, 1807, Pedro Baes testified before said surveying officer that he knew the boundaries of said Mission of Tumacacori; that "it was bounded on the south by the rancho of Buena Vista, a ranch belonging to the Romeros, the monuments of which bound the lands of the Romeros near the said mission; that the landmarks of the mission still exist, although thrown down above the Yerba Buena; that said witness was raised on said rancho of the Romeros; that the mission held its rodeos on the boundaries of the Yerba Buena, the remains of which are still seen, where the Romeros used to come to the rodeos so as to take out their cattle; that it is well known that those lands were purchased by the mission; that the corporal Eugenio, whom he raised and who was corporal of Tucson, and had been taught to read from the documents relating to the title which had been placed in his hands and which he had read; that on the said Potrero the measurements reached as far as the Pajarito above the large marsh (Cienega Grande), where the monuments were placed, and on the south as far as the Cañon of Sonoita upon a very 'tendida' gradually sloping hill." (R., p. 274.)

It will be noticed that this witness has inadvertently, by a *lapsus linguae*, stated that the monument on the "south" was placed as far as the Cañon of Sonoita and upon a very gradually sloping hill. The witness had already stated that he was himself raised on the rancho of the Romeros, viz., the rancho of Buena Vista; that this ranch bounded the Mission of Tumacacori on the south; that the monument on the south was above the Yerba Buena, which we shall presently see is a very well-known place even to this day. The witness had also already stated that the monument on the side of Potrero reached above the large marsh or Cienega Grande, which we shall also presently find is a very well-known place even to this day.

We must also bear in mind that these witnesses were called for the purpose of establishing the location of the monuments of this grant in the direction of the Mission of Guebabi; that the monument which divided the ranch of the Romeroes from the Mission of Tumacacori was actually south and above or up the river from where the old ruins of Guebabi still stand at this day, and that said place of Yerba Buena is also south and above or up the river from said ruins of the Mission of Guebabi.

The Cañon of Sonoita, on the contrary, lies east of the ruins of said Mission of Guebabi, and each of the other witnesses has corroborated this witness as to the monuments on the south above the Yerba Buena and as to the monument above the Cienega Grande; and said witness Apodaca also stated that in the direction of the east the monuments were placed at the Cañon of Sonoita upon a gradually sloping mesa.

Hence it is apparent that this witness intended to state that the monuments of said lands of the Mission of Tumacacori in the direction of Guebabi were on a very gradually sloping hill at the Cañon of Sonoita on the east and not on the south. Either said witness made a slip in testifying, and said south when he meant east, or, what is still more likely, the clerk who wrote down the testimony made a mistake and wrote "south" where the witness had stated "east."

Counsel for the Government have attempted to make a mountain out of this molehill, and have insisted that this grant should be held void for uncertainty because of this slight mistake.

We shall presently see that all of the witnesses on the part of this appellant have located this east monument of the estancia or stock ranch at a point on the side of the Cañon of Sonoita, at the end of a very gradually sloping hill or mesa and almost directly east of the meadow lands which lie on the river bottom at the nearest point above the

old ruins of the Mission of Guebabi, and which exhibit at this day unmistakable evidence of the fact that they were extensively cultivated in ancient times and were irrigated by a ditch cut through solid rock from a point in the river immediately adjoining and above said old ruins of the Mission of Guebabi.

It should be remarked that the Cañon of Sonoita is a very well known and unmistakable place at this day, and that at a point a very short distance, almost directly east, from the meadow lands just mentioned, near the ruins of Guebabi, a mesa commences which is very long and narrow and which gradually rises until it reaches the said Cañon of the Sonoita, in the direction of the east, where it abruptly ends.

From that point there is a precipitous and rough decline into said cañon, down which it would be impossible to even lead an unburdened horse (R., pp. 119, 224). The cañon itself is all broken with gulches, and was formerly so heavily covered with timber and underbrush that it was almost impossible to work one's way through it, as we are told by Mr. Barrett in his history of the boundary survey. (R., p. 151.)

Said comandante of Tubac, Manuel de Leon, when making the survey of the estancia or stock ranch of this grant on the 15th day of January, 1807, and after having heard and taken the testimony of said witnesses in regard to the location of the east monument of the lands of the Tumacacori Mission, in the direction of Guebabi, describes his location of this east monument as follows:

"A direction was taken to the east, in which direction was carefully counted and measured twenty-seven cords, the line terminating at a hill (serro), and it being impossible to proceed further in this direction on account of the ruggedness of the country; whereupon the parties interested asked me to give them the remainder of the cords in the direction of the potrero, which was on the west, and consenting to their request as reasonable, I ordered to be placed, and there was placed, at the foot of said hill (serro) of *San Cayetana*, on the side looking toward the south, another mound of stone as a sign for a landmark." (R., p. 271.)

It will be noticed that in describing the location of this east monument said surveyor first describes the east line as terminating at a hill merely, and then states that on account of it being impossible to proceed further in that direction on account of the ruggedness of the country, he ordered to be placed, and there was placed, at the foot of said hill a mound of stones as a sign for a landmark. In mentioning said hill the last time, however, the words "of San Cayetana" are added.

The remainder of the description given by this surveyor corresponds exactly with the descriptions of this east monument which were given by said witnesses Apodaca and Pedro Baez before said surveyor only a few days prior to this survey.

The words "of San Cayetana" are another palpable clerical error merely. They were probably inserted by the clerk who wrote the proceedings of that day prior to their being signed.

The only witness on the part of the Government who pretends to dispute the location of a single monument of this grant is Henry O. Flipper, a special agent of the Department of Justice and one of the codefendants with the United States in this case, and who claims to own 160 acres of the best land upon this grant (R., p. 205). The other hundred or more settlers were represented in court upon the trial of this case by William H. Barnes (R., p. 23), an intelligent and experienced attorney, who had previously served a term as one of the justices of the Supreme Court of Arizona; yet not a single one of said defendants took the stand as a witness or in any manner attempted to controvert the location of a single monument as established by the testimony of four unimpeachable witnesses on the part of this appellant.

We shall presently see by the testimony in this case that even said witness Flipper admitted under cross-examination that in proceeding east from said meadow of Guebabi he

found a mesa which was very long and narrow and which sloped gradually in the direction of the east until it reached the Sonoita Cañon; that he was able to drive in a carriage up said mesa to within a short distance of said Sonoita Cañon, and that at the edge of said mesa and on the side looking toward the south, at the foot of a large hill—which hill is shown in the photograph marked E 5, between R., pp. 264 and 265—he found an old monument of stones, which monument he identifies as being represented by the photograph marked B 5, and which monument he admits bears no signs of ever having been changed in any way. (R., p. 224.)

Said witness Flipper also admits under cross-examination (R., p. 224) that the country beyond the point where he found this monument, and in the direction of the Sonoita Cañon, is precipitous, and that it would be almost impossible to go down into the cañon from that end of the mesa with a horse, and that after you get down there the cañon is all broken up—full of gulches—and that at the end of a day's work, after surveying over a smooth mesa like that, it would look pretty rough down there.

The witnesses, including said Flipper, all agree that the place known as the San Cayetana Mountains lies in a north-westerly direction from said meadow and ruins of Guebabi, and also northwesterly from the ruins of Calabasas, and that it would be impossible to start at any point in said San Cayetana Mountains and run west and thereby reach or cross any point within the possible boundaries of said estancia or stock ranch as described in said title papers.

In the face of these facts it seems to be seriously contended by the counsel for the Government that this grant is void for uncertainty and cannot be located upon the earth's surface solely because of the fact that said words "of San Cayetana" make it impossible to locate the east monument of said estancia or stock ranch in accordance with the remaining description of said point.

By striking out said words "of San Cayetana" as a clerical error, there is not a single word of testimony left in this case which in any way throws a particle of doubt upon the exact location of each and every monument of this grant as called for in said title papers of 1807.

I assert, without fear of successful contradiction, that any surveyor who goes upon the ground with said title papers of 1807 in his hands and attempts to locate this grant—taking into consideration the condition of the times at which the same was made, and taking into consideration also the unmistakable location of said Missions of Tumacacori, Calabasas, and Guebabi and their requirements in the way of farming lands and of lands for stock-raising—will immediately reject said words "of San Cayetana" and will locate this grant exactly as the same has been established by this appellant and as it appears in the map which was made by Mr. Bonillas, which is found between Record pages 346 and 347. (R., p. 142.)

MISTAKE OF MR. REYNOLDS IDENTICAL WITH THAT OF WITNESS PEDRO BAES IN TITULO OF 1807.

It is surprising that Hon. Matt. G. Reynolds, as counsel for this great nation, would waste any time that this grant is void for uncertainty because of the one or two verbal slips which appear in the description of the location of the monuments of this grant, in view of the fact that upon the trial of this case said counsellor made at least two slips himself of an exactly similar nature.

For instance, at page 137 of the Record, Mr. Reynolds, in cross-examining Mr. Bonillas, says:

"Q. Now, returning to the northwest corner monument of the Tumacacori survey, which you have described as the devisadero, and you say there is a lookout hill" (interrupted)——

"A. Not the northwest corner, sir.

"Q. Northeast I should have said. That was my mistake. You are right."

And yet Mr. Reynolds seems to think it is very strange that one of the witnesses, in referring to the east center monument of the stock ranch, inadvertently called it the "south" center monument of said ranch. The context shows that this was a mere slip on the part of said Baes or of the clerk who wrote out those proceedings just as plainly as Mr. Reynolds' frank admission shows that he merely made a verbal slip in this instance. (R., p. 274.)

MISTAKE OF MR. REYNOLDS IDENTICAL WITH SAN CAYETANA
MISTAKE OF SURVEYOR LEON IN TITULO OF 1807.

But Mr. Reynolds seems to think it would be an impossibility for the partially educated clerk who wrote out those proceedings of the survey of Leone describing said east center monument of said stock ranch to have inserted the words "of San Cayetana" after the word "serro," or hill, the last time said hill is mentioned in said description; and the absence of said words "San Cayetana" the said first time said hill is mentioned in said description and only a few lines preceding said last time does not disturb Mr. Reynolds one iota, and in no way tends to convince him that this was a clerical error on the part of the writer of said document, even though Mr. Reynolds well knows that it was a physical impossibility to have run toward the east from any point on said stock ranch and to have thus reached the real San Cayetana mountain.

Yet at page 139 of the Record Mr. Reynolds himself makes exactly the same kind of a mistake. We find there the following questions and answers:

"Q. In making this survey you paid no attention to the Calabasas except so far as it was called for by the south center line of the survey of the agricultural lands called for

as terminating at the ridge of the Sonoita cañon near the ruins of old Calabasas?

"A. Not the Sonoita cañon.

"Q. Of the cañon. Strike out the word Sonoita.

"A. Gulch, it means.

"Q. Well, gulch. That was the only bearing that Calabasas had on your survey at all, was to designate that point?

"A. Yes, as to that line; as to the designation of that line."

If it is possible for such a highly educated, acutely intelligent, and deeply learned member of the legal profession as is Mr. Reynolds to make the mistake of designating a gulch which is near old Calabasas as the Sonoita cañon, which lies many miles away from that point, it does not seem to require a very great stretch of the imagination or a very great desire to personally construe the titulo of 1807 so as to effectuate the plainly expressed intention of the parties thereto for us to reach the conclusion that the words "of San Cayetana" were inserted by mistake and as a mere clerical error the second time that the hill at the end of a long, narrow mesa upon the ridge of the Sonoita cañon was mentioned as the place where the pile of stones was put as marking the site of the east center monument of said stock ranch; and this is especially true when by striking out said words "of San Cayetana" the description of the natural landmarks and of the particular locality and place where this pile of stones was put to mark the site for a monument, which was given by two witnesses who were the owners of the adjoining lands, and the description which was given by the officer who made the survey, exactly coincided in every particular.

It is suggested by counsel for the Government that the original map of this grant, which was filed by this petitioner as part of his petition and which is found between R., pp. 6 and 7, differs from said map made by Mr. Bonillas.

The map filed with the petition was made according to a survey by Messrs. George J. Roskrige and Frank W. Oury.

It differs from the map of Mr. Bonillas in two particulars only, and it agrees with the map made by Mr. Bonillas in the location of every monument and natural landmark called for in said title papers.

The points of difference are, first, that Mr. Bonillas followed the meanderings of the mesa on each side of the narrow valley, in which are included the farming lands of the Mission of Tumacacori, whereas Messrs. Roskrue and Oury did not take the trouble to follow those meanderings closely, but ran straight lines from and to certain points, so as to make sure to enclose all of the agricultural lands of the valley, as it was stated in the title papers that this was the desire of the said natives of Tumacacori.

The difference between the methods of survey pursued by said Roskrue and Oury and that pursued by said Bonillas results in the survey of Messrs. Roskrue and Oury showing 9,200 acres as the area of the agricultural lands, whereas the survey of said Bonillas shows 9,515.8 acres as the area of said agricultural lands; and the survey of said Roskrue and Oury of the estancia or stock range results in 72,150 acres as the area of said stock range, whereas the survey of Mr. Bonillas results in only 63,730.9 acres as the area of said stock range.

The second point of difference between these two surveys is the cause of the reduction of the area of the stock range in the survey which was made by Mr. Bonillas.

In both these maps the south monument of the stock range is placed at a point above the Yerba Buena and near a place called Vado del Apache. From that point Mr. Bonillas runs his south boundary line to the monument at the Cienega Grande. From that monument he runs his south boundary line parallel to the line running from the center monument of said stock ranch to the west center monument of said stock, ranch whereas Messrs. Roskrue and Oury omitted to run the south line of the stock ranch from said point above the Yerba Buena to the Cienega Grande monument,

but ran said south boundary line directly from said point above Yerba Buena toward the west and parallel throughout its entire length with the line connecting said center monument of the stock ranch with the west center monument of said stock ranch. This was done solely in compliance with my own orders and directions, and was due wholly and entirely to my own misconception of the manner in which the laws of Mexico required the outside lines of a survey to be run under such circumstances.

The testimony of Colin Cameron establishes these facts at R., pp. 168-'9.

There is one clerical error in said map of Messrs. Roskruge and Oury, viz., the said center monument at the point above the Yerba Buena is erroneously designated on the map as the Vado Seco, instead of being designated as the Vado del Apache. The Vado Seco is a well-known place, and is actually located northwest of the Yerba Buena and down the river from that point, as was established by many witnesses upon the trial.

We were unable to explain these seeming discrepancies between the two maps by the testimony of either Mr. Oury or Mr. Roskruge for the reason that Mr. Oury had died prior to the day of the trial, and because Mr. Roskruge, who had been expected to testify, was confined to his bed by a sudden attack of illness, and was thus prevented from being offered as a witness before the Court of Private Land Claims. The evidence of both these facts appears in the record. (R., pp. 168, 185.)

In the survey of said lands which was made by the said comandante of Tubac, Manuel de Leon, the east monument of said stock ranch was placed at the point described in the testimony of said witnesses, as we have just seen. The south monument of said stock ranch was placed at a point called the Vado Seco, which was some distance below the Yerba Buena. The west monument of said stock ranch was placed on the slope of the highest hill to be seen from

the Potrero. Said survey was completed by Leon on the 15th day of January, 1807, and Leon states that on January 17, 1807, he delivered the proceedings, which had been taken and performed by and before him, to Juan Legarro, the Governor of the Mission of Tumacacori; and an examination of the title papers of 1807 shows that these proceedings were delivered to said Legarro, and that he added thereto another petition for additional lands, as well as said testimony of said witnesses in regard to the location of the monuments of said additional lands. (R., p. 272.)

On March 18, 1807, an additional petition, by said four "principal natives of the pueblo of Tumacacori, in the name and representation of the community of the natives of said Republic," was filed with said intendente; and this petition contains the statement that the petitioners have "produced before the official commissioner (said Leon) the judicial proof, which is set forth in three written folios," by which it is shown that their lands on the south "are bounded by the rancho of the Romeros and beyond the place called Yerba Buena, and on the side of the valley of the Potrero as far as the upper end of the large marsh (Cienega Grande), and on the side of the east as far as the Cañon of Sonoita; which lands and places belong to us (said natives of Tumacacori) by legal, public, and judicial purchase from their primitive and legitimate owners," and that they have owned them since the time of the Jesuits. The petition proceeds to pray that these lands be adjudicated to them on account of their increase of stock and the necessity they have for the same. (R., p. 275.)

On the same day, at the capital of Arispe, the intendente ordered said petition and the testimony of said witnesses to be annexed to the expediente and the report of said Leon, and that the same should be passed to the Attorney General. (R., p. 276.)

On March 30, 1807, the Attorney General made his report to the intendente upon this expediente and recommended

that, in view of the fact that the stock, cattle, and horses of Tumacacori were increasing by reason of the industry of the natives, they should be granted all the land described in said survey which was made by said Leon, as well as all the land which had previously been occupied by the abandoned pueblo of Calabasas, and the dimensions of which are shown in the testimony taken before said comandante of Tubae, Manuel de Leon. (R., p. 276.)

On the 2d day of April, 1807, said intendente executed and delivered said titulo of 1807 in favor of the community of Indians of Tumacacori, granting them all the lands "that are set forth and described in the foregoing proceedings of measurement and the testimony." (R., p. 278.)

It will be noticed that the lands granted are not only those which are included within the said proceedings of measurement, but those which are included in the testimony, viz., in said testimony of Romero, Apodaca, and Baez.

In other words, the intendente grants them all the lands within the boundaries as surveyed by said Leon, and in each instance where said Leon did not extend a line of his survey to the point to which said witness stated that the lands of said Mission of Tumacacori extended, the grantees are entitled under said conveyance to extend the line of said survey to the point described in the testimony of said witnesses.

The granting officer recites the fact that he makes said grant in pursuance of Article 81 of the Royal Ordinances and Instructions to Intendentes and in conformity with what is set forth in the Royal Cedula in relation to this matter on the 15th of October, 1754. (R., p. 278.)

Article II of said Royal Instructions of October 15, 1754, reads as follows, viz.:

"The judges and officers in whom is delegated the jurisdiction over the soil and composition of granted lands shall act with lenity, forbearance, and moderation, with verbal and not judicial process in questions of lands held by In-

dians, and all others where it may be necessary, and in particular where there are farms, farming and stock-raising are in question, since in regard to community lands and those granted other towns for pastures and commons there is no occasion to do anything new but to maintain them in position thereby and to restore to them those that have been taken from them and give them more land as the exigencies of the population require; and do not use rigor in regard to those held by Spaniards and people of other castes, keeping in mind the provisions of laws XIV, XV, XVII, XVIII, and XIX, Title XII, Book IV, Compilation of the Indies." (Keynolds, p. 51.)

It will be noticed that this law authorizes the intendente to use his discretion in regard to the amount of lands which he shall grant to the Indians, and he is directed to be lenient, and to give them all the land that they seem to require, and particularly where farms, farming, and stock-raising are in question. In petitioning for these lands the natives set forth the fact that they need and require them, and that they need and require additional lands for farming and stock-raising purposes, because of their growing population, etc., and the Attorney General recommends that these additional lands be granted to them on that account.

The Mission of Tumacacori was entitled by law to four sitios of land as a farm and two sitios of land as a stock ranch, besides other lands as colindantes. The Mission of Calabásas was entitled to a similar quantity and the Mission of Guebabi to a like quantity; hence it appears that the Mission of Tumacacori was granted all the lands in its own mission, as well as all the lands of the Mission of Calabásas, and likewise all the lands of the Mission of Guebabi which it had previously purchased. It is apparent that the total quantity of land which was granted to said Mission of Tumacacori by said deed of 1807 was not less than 18 sitios or about that quantity.

The total quantity of lands within the boundaries of this grant as established by the appellant is 73,246.7 acres, or a little less than 17 sitios.

BOUNDARIES OF GRANT.

ANALYSIS OF SURVEY AND MAP OF Y. BONILLAS.

A map of this grant appears between R., pages 346 and 347. It was made by Mr. Y. Bonillas from his field-notes of the actual survey of the grant. (R., p. 142.)

In the case of *McIvers, lessee, vs. Walker*, 9 Cranch, 178, speaking through Chief Justice Marshal, this Court said :

"It is a general principle that the course and distance must yield to natural objects called for in the patent. All lands are supposed to be actually surveyed, and the intention of the grant is to convey the land according to that actual survey. Consequently, if marked trees and marked corners be found conformably to the calls of the patent, or if water-courses be called for in the patent, or mountains or any other natural objects, distances must be lengthened or shortened and courses varied so as to conform to those objects.

"The reason of the rule is that it is the intention of the grant to convey the land actually surveyed, and mistakes in courses or distances are more probable and more frequent than in marked trees, mountains, rivers, or other natural objects capable of being clearly designated and accurately described."

In the case of *U. S. vs. Billings*, 2 Wall., 449, this Court said :

"The formula of this delivery of possession or livery of seisin did not require a survey of the estate."

In case of *U. S. vs. Hancock*, 133 U. S., 193, Justice Brewer, speaking for this Court, said—

"If (the survey is) made in good faith and unchallenged, as this has been for over 15 years, whatever doubts may exist as to its correctness must be resolved in favor of the title as patented."

In the case at bar the survey has remained unchallenged for over ninety years.

The titulo of 1807 states that in making the survey the surveyor, Manuel de Leon, for the purpose of commencing the measurement of the lands pertaining to the mission as a farm, proceeded as follows :

INITIAL POINT OR CENTER OF TUMACACORI GRANT (AGRICULTURAL LANDS).

"Wherefore the cross in the burying ground in said mission was fixed upon as the center, the measurements of the land as asked for to commence at said cross." (R., p. 268.)

Mr. Bonillas testifies (R., p. 142) that he made the map just referred to from field-notes of the survey of the grant which was made by him, and that—

"In making this survey I had a certified copy of the testimonio or title papers of the grant. The starting point for the Ejidos—fundo legal, as the lands are called in the testimonio—is given as a cross standing in the graveyard of the Mission of Tumacacori. I had no difficulty in finding the mission, and I went right there." (R., p. 107.)

"There is an old church—the ruins of the church—there, and the graveyard itself, which is very well preserved, and very well preserved walls are there, with cement, and it is today a very fine enclosure—good wall. The graveyard is in the rear of the church, towards the north. It is about 75 feet wide by 200 feet long. I took no measurements of it and am guessing at the dimensions.

"I took an enclosure around one—that is, in this graveyard as the center. I have seen other graveyards similar to that one, and I have seen what they call a little chapel, where they used to pray, and those were surmounted by a cross, and I think that cross was on top of this circular or round enclosure. I took that as the starting point." (R., p. 108.)

The witness then identified Exhibit "C," Exhibit "D" as photographs of said church, and Exhibit "R" as a pho-

tograph of said chapel, upon the top of which he believed said cross to have been located. (See photographs in R., between pages 284 and 285.)

Witness Henry O. Flipper.

"I measured the old burying grounds at the old Tumacacori and it is 175 feet 6 inches by 61 feet wide." (R., pp. 201, 202.)

(Cross-examination:)

"I know where the Tumacacori Church is and know the graveyard which is in the rear of the church, and the circular mortuary which is shown by the photograph marked Exhibit 'R.'"

"My opinion now is that the cross which was taken for the initial point for the measurement of the Tumacacori claim undoubtedly stood on top of the mortuary. I don't think there is any doubt about it," "and the starting point of said Tumacacori grant was in front of that cross and inside of that enclosure." (R., p. 207.)

The witness Colin Cameron corroborated this testimony as to the location of the initial point or center monument of said Tumacacori grant. (R., pp. 154-156.)

The witness Bayze also corroborated this testimony. (R., p. 170.)

NORTH CENTER (AGRICULTURAL LANDS).

Leon says:

"I went to the said place of the burying ground, and, being in front of the cross, the point fixed as the center, I placed a compass, properly regulated, which I had also brought for the purpose. I took the direction of the north and down the valley, and then carefully measured and counted 50 cords, the line terminating at a point in front devisadero (lookout hill), which point stands between the point where you reach the valley and two very large alamos (cottonwood trees) standing outside of the river bed, at which point I ordered a number of stones to be placed as a sign

for a landmark, which was done, proceeding no further in this direction because the boundaries of the presidio of Tubac were reached." (R., p. 269.)

At R., p. 267, Leon states that the Presidio Tubac is distant one league, or three miles, from the Mission of Tumacacori.

Witness Bonillas.

Beginning at R., p. 108, Mr. Bonillas says:

"I did not find the north center monument.* It is described as being established on the descent to the valley 50 cords north from the center point, in front of the devisadero, and the way I understand it, or understood it when I got on the grounds first, is that the point where the monument was established was between this devisadero and some large cottonwood trees which grew outside of the river channel. Although the literal reading of the document would lead one to believe that the devisadero stood between the point where the line terminated and these cottonwood trees, that is a topographical impossibility when one gets on the ground, and then one cannot fail to understand what they mean in the document. I got to this point in front of the devisadero, and to the west, on the edge of the valley, I found a very large and old monument of loose stones, and on top of the devisadero I found a similar monument. The title papers or documents I had in my power at the time said they did not go further north or down the river with the survey on account of meeting the boundary lines of the lands of the presidio of Tubac. Those two large monuments that I found there I have reason to believe and I believe were monuments of the town lands of Tubac and were adopted as the monuments of this pueblo or mission grant, as their object, as they say, was to take the agricultural and little of the unproductive lands on both sides of the valley."

See R., p. 269, where Leon states that when he had finished the survey of these farming lands, "no other agricultural lands being found in all the valley or in its

neighborhood, and taking some cords of the barren lands in the direction of the east and west."

Mr. Bonillas proceeded to state that—

"The valley north of the mission extends in a general direction north and south. From the mission it runs slightly towards the southeast. This devisadero is a hill that rises above the rest of the rolling hills which are characteristic of the banks there, about this part of the valley, and the name that it has is very appropriate, because when you get to the top of it you look the country all around, and this is what we mean in Spanish by devisadero, a point from which you can devisar or look out or watch all around."

"You can see Tubac and the houses in that town plainly from the top of this devisadero, and you can also see the Mission of Tumacacori."

"The devisadero is located just about half way, I think, between the Tumacacori Mission and Tubac. It may be a trifle further to Tubac from that line than to the mission; but, speaking in general terms, I would say it was just about half way, as the description gives it."

"The devisadero is the point I establish as the northeast corner monument." * * *

"I made up my mind then that I would take those two monuments that I found on both sides of the valley—the line connecting them—as the north boundary line of the lands of Tumacacori Mission." (R., p. 109.)

The cross-examination of Mr. Bonillas upon the question of this north center monument appears at R., pp. 123, 126-7, 127, 138, and I submit that it strengthens the position taken by him upon his direct examination.

At R., p. 143, we offered to prove by Mr. Bonillas that the map made by Deputy U. S. Surveyor Harris under the direction of the Surveyor General of Arizona in the year 1880 adopted this same hill as the devisadero called for in the title papers and limited the purposes of our offer to introduce the map made by Mr. Harris to that of tending to establish the fact that the natural landmarks called for in the title papers are well-known places, but the court sus-

tained an objection by Mr. Reynolds and ruled the Harris map out.

At R., p. 144 Mr. Bonillas accounts for the absence of any pile of stones to mark the place for the north center monument by the fact that it was placed in the center of the valley and that the Santa Cruz river, which runs by there, is subject to great overflows in the rainy season, and that it is not infrequent for such overflows to destroy and cut up land, tear down trees, etc.

Witness Flipper.

(Cross-examination.)

On cross-examination Mr. Flipper states that he knows the devisadero or the lookout hill which is to the north of the Tumacacori church; that it is a well-known place and is the place taken by Mr. Bonillas in his map, and that some cottonwood trees grow outside of the river bank on the opposite side of the valley from said devisadero, and that to the north of this the cottonwood trees really grow in the bed of the river, as the river there spreads over all the country. (R., pp. 207-'8.)

The location of this devisadero and of these cottonwood trees was also established by the testimony of Colin Cameron (R., pp. 147-'8), and by the testimony of Thomas Bayze. (R., pp. 170-'1.)

The fact that this devisadero which was taken by Bonillas as the place called for in the title papers is a well-known place was also established by the testimony of Jesus Maria Elias at R., pp. 61-'6. This witness was born at Tubac and lived at Calabasas until he was seven years old. His mother and father were married in the church at Tumacacori, the photograph of which appears in the record, and his grandfather was the administrator of the hacienda of the Mission of Tumacacori.

SOUTH CENTER MONUMENT (AGRICULTURAL LANDS).

Leon says:

"Returning to the center, a direction was taken south, in which direction was measured and counted with equal care 332 cords, the line terminating on the upper side adjoining the gulch close to the place called Calabasas." (R., p. 269.)

It will be noticed that in making the survey Leon only ran 50 cords toward the north, and ran 332 cords or nearly seven times as far toward the south. As the distance from the mission church to said devisadero which marked the north center monument is actually about one and one-half miles, as is stated by Leon in the title papers at R., p. 267, and as said Mission church has been established as the center point of the grant beyond all question, and as the only witness on the part of the Government admits that the devisadero which was taken by Mr. Bonillas is the one referred to in the title papers as being opposite the north center monument, we may reasonably expect to find the south center monument at a point seven times as far from said Mission church as said devisadero is from the same place. In other words, we may reasonably expect to find the south center monument at a point about ten and one-half miles from said Mission church in the direction taken by said Leon.

The map of Mr. Bonillas shows that the point taken by him as the south center monument of the farming lands is at a distance of almost exactly ten and a half miles from said Mission church.

It is contended by counsel for the Government that by the words "the line terminating on the upper side adjoining the gulch close to the place called Calabasas" Leon meant that the point adopted by him as the place for the south center monument of these lands was a point on the upper side of the tract of land which belonged to the Mis-

sion of Calabasas. This construction is adopted by counsel for the Government and by Special Agent Flipper.

To adopt this construction of the language would compel us to accept a point which would be much less than seven times as far from said church or initial point than is said devisadero.

I believe it is also contended on the part of the Government that the words "upper side" refer to the very tract which was then being measured, and witness Flipper did state upon cross-examination that he so believed; and hence Surveyor Leon is made to state that in surveying a tract of land whose boundaries were as yet unknown and unfixed he ran from the initial point to a point on the upper side of the very tracts he was then measuring. This would be absurd.

The words "upper side" are construed by Mr. Bonillas as referring to the upper side of said gulch which is close to the place called Calabasas, to wit, to the Mission of Calabasas.

Mr. Frank Oury in making the survey for the map which was attached to the petition of appellant construed these words "upper side" as referring to the valley of the Santa Cruz up which the surveyor Leon was then running his line, and the witness Colin Cameron at R., pp. 156, 157 testifies that the valley containing the agricultural lands which were then being measured as a farm for said Mission of Tumacacori becomes very narrow at a point close to the old ruins of Calabasas and right where a gulch comes into the valley at that place.

At R., p. 172, the witness Thomas Bayze testifies that the ruins of old Calabasas are on the southern boundary of the valley, and he explains that he thereby means that the valley pinches out at that point. He further states that a cañon comes into the valley at that point just above the old ruins.

It is apparent, therefore, that the surveyor Leon may

have intended to refer to the valley when he stated that the line terminated upon the upper side, but by accepting this construction of those words Mr. Oury was simply compelled to adopt the opposite side from that taken by Mr. Bonillas of the same little gulch which comes into the upper side of the valley close to the ruins of old Calabasas at that point. In other words, the point taken by Mr. Oury and the point taken by Mr. Bonillas are not more than 30 or 40 feet apart.

Witness Flipper.

At R., p. 227, Mr. Flipper testifies that there is a gulch running into the valley adjacent to the ruins of old Calabasas, and that the gulch is only about fifty yards from the ruins. In order to avoid admitting that this place for a monument was correctly located by Mr. Bonillas, it became necessary for Mr. Flipper to finally take the position that he had no means of knowing where the old ruins of Calabasas were, although these ruins stand there to this day, or, rather, the ruins of the houses reconstructed by Gandara in 1851 out of the ruins of the old mission still remain there. (R., p. 228.)

The witness Jesus Maria Elias testified that in building his houses Gandara had reconstructed the ruins of the old mission. (R., p. 62.)

Witness Bonillas.

At R., p. 110, Mr. Bonillas says:

"Next I went to look for the south center monument. The title papers said that from the center 332 cords were measured towards the south. I think they say along the valley, but I am not certain of that, the measurement terminating on the upper side, adjoining the gulch near the place called Calabasas. I went to the place called Calabasas, as it is quite a well-known place, and to the south of it there is a gulch adjoining right close to Calabasas, to the ruins of Calabasas, and on the upper side or the southern side I looked

for the monument. I was disappointed when I did not find it there, because I thought that was just exactly the place where it ought to be, but on reading the papers that I had, I found that there is no mention of a monument having been established there. I suppose the description of the topographical features of this place was so precise that they did not deem it necessary, perhaps, to establish a monument. They do not mention it, and there is no monument there, but I could fail to accept that place as the place called for."

At page 43 of their brief the counsel for the Government quote this testimony of Mr. Bonillas, and then say:

"Mr. Bonillas's examination of the title papers at that time must have been rather superficial, as Leon, the surveyor, in surveying the first line of the estancia, says that in running towards the north there was measured 80 cords, the line terminating at the same monument to the agricultural lands, the same being in one body."

Counsel for the Government must pardon me for suggesting that they made a serious mistake by not securing the services of Mr. Bonillas as an expert for the Government instead of the services of Mr. Flipper, who has doubtless led the learned counsel into this ridiculous blunder; for I would regret to suppose that the examination of the title papers made by counsel for the Government, both at the time of trying this case and at the time of writing their brief, was as superficial as this blunder would seem to indicate.

The words used in the original Spanish document, which counsel for the Government have translated as follows: "The line terminating at the same monument to the agricultural lands, the same being in one body," actually read as follows, when properly translated, to wit: "The line terminating at the same place or site for a monument to the agricultural land, the same being in one body."

I must convict Mr. Reynolds of this error out of his own

mouth, for at page 43 of his valuable work on Spanish and Mexican Land Laws we find the following, to wit:

"The words 'senal de mojonera' are nearly always translated wrong. Senal is a sign or mark and mojonera the site or place for a monument."

Hence we see that the word "mojonera" means "the site or place for a monument" and does not mean the monument itself; nor does it even mean the pile of stones which was usually placed as a senal or sign to mark the spot for a monument.

In every case where Leon did place a pile of stones as a senal de mojonera he explicitly stated this fact in the title papers.

We have seen that in running from the Mission church to the south center monument of the farming lands Leon states that the line terminated on the upper side, adjoining the gulch, close to the place called Calabasas, but he does not state that he placed any pile of stones there, or that he placed anything there, either as a monument or as a sign for a monument.

In running from the center of the estancia or stock farm to the north center boundary, Leon states in the original Spanish document that the line terminated at "La misma mojonera," and Mr. Reynolds has already told us that this word "mojonera" is nearly always translated wrong, and that it really means the site or place for a monument. "La" means *the*, and "misma" means *same*, and hence "La misma mojonera" means the same site or place for a monument.

We see, therefore, that Mr. Bonillas was correct in his supposition as well as careful in his examination of the title papers, and we also see that somebody is to blame for having made an exceedingly "superficial" examination of these papers for the benefit of counsel for the Government.

EAST CENTER MONUMENT, AGRICULTURAL LANDS (MONUMENT
UNCHANGED). (See Photographs II and S.)

Leon says:

"Returning to the center, there was carefully measured towards the east seven cords from the river bed, the line terminating at the foot of the hill, within a mesquite grove, at which place I ordered a mound of stones to be placed as a sign for a landmark, and it was so placed." (R., p. 269.)

Mr. Bonillas testifies (R., p. 109, 110) that in looking over the valley from a small elevation to the west of the church, and at right angles to the course of the valley, he saw a mesquite grove on the east side of the valley and some hillocks or lomas just back of it. He says: "I went to this mesquite grove—it is at the mouth of a little gulch—and there I found an old monument of loose stones nearly covered up by the erosion of the waters coming from this little gulch." "That answers the description of the title papers, and I believe it is the east center monument of the grant." At R., p. 199, Mr. Flipper admits that this mesquite grove still exists at a place directly east, across the valley from said initial point or Mission church, and that back of it is a mesa that runs east and turns southerly. Mr. Flipper does not attempt to state that there is any other mesquite grove, or ever was any other mesquite grove, in that section of the country, or at any other place, that would answer the call for this monument, and he does not question, but admits, the fact that the monument exists in said mesquite grove, just as was shown by the photograph marked Exhibit II and the Exhibit marked S in the record. Mr. Colin Cameron corroborated the testimony of Mr. Bonillas at R., pp. 148, 164-'7, and Mr. Thomas Bayze at R., p. 171.

WEST CENTER MONUMENT, AGRICULTURAL LANDS (MONUMENT
UNCHANGED). (See Photograph "T.")

Leon says:

"We returned to the center, taking the direction west, where was measured and counted with equal care 11 cords, the line terminating upon a long sloping hill (tendida), upon which stands the place called mesquite seco, at which point I ordered another mound of stones to be placed as a sign for a landmark, and it was so placed." (R., p. 269.)

At R., p. 110, Mr. Bonillas says:

"The west center monument is described as being about eleven cordeles in a westerly direction from the graveyard upon a 'loma muy tendida,' and that I understand to be a long sloping hillock, and on top of just such a hill I found a very large monument."

Upon being shown photograph T, Mr. Bonillas said:

"Yes, sir; I recognize that picture. It was taken after I had set up the flag for trigonometrical station. I know the photograph and I know the monument itself."

"The place where the monument is established is said to be Mesquite Seco, which means dry mesquite. Of course, I do not know what reason there was for calling it so, but it is very noticeable that the mesquite that grow out there have a dry appearance, and there are several dry ones." (R., p. 110.)

The photographs marked U, V, and W in record were identified by this witness and by the witnesses Colin Cameron and Thomas Bayze as being photographs of said mesquite near said monument (R., pp. 157, 171), and the photograph marked T was identified by all these witnesses as being a photograph of said monument itself. The age and unchanged appearance of said monument was also established by all these witnesses and its existence and ancient appearance were admitted by Mr. Flipper. (R., p. 198, 199.)

At R., p. 221, Mr. Flipper testified that the word "*tendida*" means extended or drawn out, and that it would be a proper term to apply to a mesa that was long and narrow, and that a *mesa muy tendita* might mean a long, narrow mesa; and in the same way "*loma muy tendita*" would mean a hill which is very long and sloping.

Hence we see that the monument adopted by Mr. Bonillas exactly fits the call of the title papers.

SIDE LINES OF FARMING LANDS.

At R., pp. 111-122, Mr. Bonillas explains why the side lines of the agricultural lands have been surveyed by him in such a zigzag course. He says:

"I was impressed by the fact that they mention in different parts of these papers that the intention was to take all the agricultural lands in the valley of the Santa Cruz river and those adjoining it, and the few cords, they say, to east and west of the valley, so from that I think it is clear that they intended to take from the edges of the valley on both sides, so as to take in these low lands or agricultural lands for farming purposes, and the woods, and so on. So I determined to make my survey so as to take in those lands literally just exactly as called for in the papers. So I established the series of trigonometrical stations on both sides of the valley and made a complete triangulation of those lands. I have my original field-notes and all my calculations with me."

"I noticed that while I went around personally with my helpers to put up the flag for trigonometrical stations—I noticed on the edge of the valley, just exactly where I would make the survey, in accordance with the calls of these papers—I found monuments on both sides of the valley, and those monuments, with very few exceptions, were old monuments. I do not remember how many, but there were a few—perhaps two or three—that were not very old, but the generality of them were old monuments." * * *

"There are about 33 or 34 of these monuments in all, and with very few exceptions they were all old monuments."

The area to which the Mission of Tumacacori was by law entitled for farming lands was *17,353.6 acres*, whereas the survey made by Mr. Bonillas only takes in *9,515.8 acres*. (R., p. 112.)

We have seen that Leon stated that the survey took in all of the agricultural land in the valley or its neighborhood besides some cords of the barren lands in the direction of the east and west. (R., p. 269.)

Hence there can be no doubt about the correctness of the survey made by Mr. Bonillas, and there can also be no doubt about the correctness of the point taken by him as the place or site for the south center monument, as the valley pinches out and ends at that place, and therefore we have thus taken all the agricultural lands in said valley, as recited by Leon.

ANALYSIS OF BOUNDARIES OF THE ESTANCIA OR STOCK RANCH.

INITIAL OR CENTER POINT OF ESTANCIA.

Leon says:

"I ordered the Governor, Juan Legarro, that, after consulting with his sons, he should proceed to point out the place desired as the center of the lands for the stock ranch or estancia, who designated the place Guebabi, including the mouth of the Potrero, this appearing most suitable for the purpose designed, as also because it had been a pueblo pertaining to this mission, where it had always kept the stock."

"Whereupon the meadow by the riverside was taken as a center, at which point I ordered a mound of stones to be placed, and it was instantly placed, to mark the central point for the commencement of the measurement," etc. (R., p. 270.)

From other parts of the title papers it is apparent that by "the place Guebabi" Leon meant the Mission of Guebabi,

and it is apparent that Legarro, who claimed that the Mission of Guebabi had been a dependency of the Mission of Tumacacori, and that its lands had belonged to that mission for a long time, and who also claimed and proved to said Leon by three witnesses that the Mission of Tumacacori owned the lands located in the Potrero and extending to the monument above the Cienega Grande, intended to point out to Leon that he desired the Mission of Guebabi to be taken as the center of the stock ranch and to have said stock ranch surveyed so as to include said Potrero as far south as said monument above the Cienega Grande. (R., pp. 272-274.)

In compliance with this request, Leon thereupon took the meadow by the river side as a center (R., p. 270). We shall presently see that he ended his survey toward the south at the Vado Seco, and that by running a line from that point parallel with the line run by Leon from the center adopted by him to the west center monument we would take in a considerable portion of the valley of the Potrero, but the lands would not extend quite as far south as said monument above the Cienega Grande.

We have seen that Legarro complained of this survey (R., p. 270), and that in making the grant the intendente permitted the lands to extend as far as the monument above the Yerba Buena as established by said witnesses, and said intendente also permitted the lands to extend on the side of the Potrero valley as far south as said monument above the Cienega Grande, and Mr. Flipper admits in his testimony that if these various points as surveyed by Mr. Bonillas are adopted as the boundaries of the grant it would be proper under the Spanish system of surveying to extend the side lines from point to point in the exact manner in which they have been extended by Mr. Bonillas. (R., p. 212.)

The ruins of the Mission of Guebabi is a well-known place and is easily identified by the remains of the old church and other houses which are still there (R., pp. 119, 68, 172), and it was admitted by Mr. Flipper that these ruins

are located at the point indicated upon said map of Mr. Bonillas. (R., p. 208.)

Witness Bonillas.

At R., p. 112 Mr. Bonillas testifies as follows:

"After I got through with the surveys of the agricultural lands I proceeded to make a reconnoissance for the survey of the estancia, or lands for stock-raising purposes. The center of the estancia was said to have been established in 'La Vega del Rio'—that is, the meadow land or low land by the riverside, at the place called Guebabi. The place called Guebabi is very well known to me and has been for a number of years. It is not at the old Mission of Guebabi, but below the old mission, at the place very widely known as Benedict's ranch. * * * about one mile from the mission. There are old houses there, and there are some new houses there, too. The place is very well known. The old houses have the appearance of very great age. This place is about a mile down the river from the ruins of the mission in a direction about northwest."

"Exhibit X is a photograph of a monument that I built to establish my center point to put a flag."

"The description in the title papers is said to be 'La Vega del Rio, or Meadow of the Riverside.' Almost any place in front of that would answer because of the title papers, so I chose this point right in the meadow by the riverside, but close to a very noticeable, prominent clump of cottonwood trees, and I established a monument there." (R., p. 113.)

At R., p. 129, upon cross-examination, Mr. Bonillas testified as follows:

"I established a center monument at Guebabi, at the Vega del Rio. I found ruins there. There is, I believe, one or two monuments there, piles of stones, but they don't look old enough; they didn't look old enough for me, and I didn't think they were the monuments, and La Vega del Rio is very well defined." * * *

"There are little, small places of land up the river near the ruins, but La Vega del Rio—the meadow land, the best land—

is right at the place called Guebabi. In 1807 there could not have been any place up at the old ruins that would answer this description as La Vega, because the river is very narrow there at the ruins." * * *

"The title papers entirely do away with the question that the center might have been established at the ruins of the mission, because they say, in measuring from the point called Guebabi, they went towards the south, and the line terminated beyond the ruins of the ancient mission at the Vado Seco."

At R., p. 185, Mr. Bonillas testified as follows:

"I translated the words Vega del Rio as meadow by the riverside. The Spanish and English dictionaries by Velasquez, just handed me, define the word 'vega' as 'an open plain; a tract of level and fruitful ground; a mead or meadow; second, in Cuba, a tobacco field, generally by the bank of a river.'"

At R., p. 186, on cross-examination, Mr. Bonillas testified that there is a very much larger vega below the mouth of the Potrero, up near Calabasas, near where he fixed the north center monument of the estancia; that there is a very much larger vega there than anywhere else along that river.

At R., p. 186, on redirect examination, Mr. Bonillas testified that the large meadow of Calabasas to which he referred is about four miles down the river from the Mission of Guebabi.

There is a place known as Guebabi aside from the Guebabi Mission, and that the place known as Guebabi is at what is commonly known as Benedict's ranch, about a mile down the river from the ruins of the Mission of Guebabi.

And, said Mr. Bonillas—

"I understand that this place known as Guebabi and as Benedict's ranch was the principal farming lands of the Mission of Guebabi. Several persons have told me that. I remember the first time I heard it was in 1876 from Mr.

Benedict, who was living there at the time. Mr. Benedict's ranch is directly opposite the meadow which I took as the center of the Guebabi grant, and is on the west side of the river and not over two or three hundred yards away." (R., p. 187.) * * *

"There are old ditches at this place which was taken by me as the meadow, which give evidence of the fact that this place was cultivated a long time ago. I have run a line of levels for a new ditch there and have followed very much the course of the principal old ditch which runs to that place. This old ditch seems to be very old and is taken out of the river near the ruins of the old Mission of Guebabi." (R., p. 187.)

At R., p. 189, Mr. Bonillas further describes this Vega del Rio and states that a gulch runs into the river below the meadow on the east side; that the meadow is quite wide, and that on the west side of the river the bank rises to about fifty or sixty feet, and that on the east side of the river the bank rises to a height of about 75 or 80 feet; that the character of the river bed between this meadow and the Vega del Rio and the ruins of Mission of Guebabi is very narrow, with high and steep banks; the hills on the west side come right to the shore of the river, and from the east, where the ruins are, there are also high banks; these banks are of sandstone and volcanic formation.

Witness Colin Cameron.

Testifies at R., p. 191, 192, that he observed the width of the vega or meadow, which was run by Mr. Bonillas as the center of the stock farm with a considerable degree of care, and that the meadow is about one thousand yards wide.

Mr. Cameron said further :

"I had Mr. Bonillas make that survey (for a ditch to run water out upon that meadow), because we wanted to take the water out of there and get as much of this land as we could, and I paid particular attention to it on that account. This gulch comes into the river almost entirely below that

meadow, and this is the first place on the river where the water can be got onto the meadow, and the remains of the old ditch can be distinctly seen along the foot of these mesas, and the rains washing down have obliterated it in some places, but at other places it is still distinctly visible.

"Where it is taken out at old Guebabi (the mission ruins) the river has been washed out and cut maybe ten feet deeper, because you can see about eight feet where they had to cut through the stone to take it out, and the water cannot be gotten to the same level as from below, because it is so much lower down. That is the first place after you leave the old mission that the water can be taken out on the land at all."

Witness Thomas Bayze.

At R., p. 192, Mr. Bayze testifies that he is acquainted with the topography of the country at the vega which was taken as the initial point for the survey of the stock ranch by Mr. Bonillas, and that said meadow is about 1,000 yards wide from bank to bank.

On cross-examination Mr. Bayze testifies that he knows the vega near Calabasas, and that it is a very large valley down there, about a mile and a half across it. (R., p. 193.)

At R., p. 172, Mr. Bayze testifies that the ruins of the Mission of Guebabi are very well known by that name, and that the trail from Tubac to Santa Cruz runs within about 50 yards of those ruins, and that the river bed in the immediate vicinity of the Guebabi ruins is very narrow, with high rocky bluffs; that the bluffs on the east side are twenty or thirty feet high, and that the mountain comes right into the river on the west side, and that there is no meadow at that place, and that he knows the meadow of Guebabi, and that it is about a mile north and down the river from said ruins of Guebabi.

At R., p. 150, Mr. Colin Cameron testifies that he knows where the Meadow del Rio of Guebabi is, and that it is the place which was taken by Mr. Bonillas as the center of the stock ranch; that he also knows where the old ruins

of the Mission of Guebabi are, and that the mesa comes very close to the river at that point; that the ruins are on a rocky cliff, and that just beyond it, a little way up the river, there is another cliff like that, and the river is very narrow there, and that there is no meadow at all at that point, and that the meadow which was taken by Mr. Bonillas as the center is the first meadow going down the river from the old ruins, and is the first place where any water could be got on the land to farm.

"That this place was pointed out to him as the Meadow of Guebabi for the first time by Mr. Watts in Sept. or Oct., 1883."

This is the time Mr. Cameron first came into that country. (R., p. 98.)

Mr. Cameron further testified that this meadow is known by everybody as the Meadow of Guebabi. (R., p. 150.)

Witness Flipper.

At R., p. 208, Mr. Flipper testified, under cross-examination, as follows:

"Q. Now in reading the title papers of 1807, is it not your opinion that it was the intention to take the center or starting point of the estancia or Guebabi grant in the valley land near the old mission, extending down the Santa Cruz river, to include the valley lands around the mouth of the Potrero creek?"

"Objected to by counsel for the Government as calling for a matter of opinion."

"A. My opinion is, after careful study of that expediente, that the estancia should include the ruins of the Guebabi, but the center should not be near the mission. *That is my opinion now.* There is nothing in the expediente which says where the center was placed, except in the vega of the river. It does not locate the vega which was taken."

"Q. At the time you made this report (a sworn report before referred to in this brief), on the fifth day of September,

1890, you then stated that it was your opinion that it should be taken as near as possible to the mission, didn't you?

"A. *I may have so stated at that time.* I have made a more careful study of the ground since then.

"Q. Do you know from the fact that the Apache Indians always caused trouble that it would have been the most natural and probable thing to have taken it as near to the mission as possible?

"A. It might have been if there had been a mission there, but those were ruins.

"By Mr. REYNOLDS: I object. This is argumentative, based on direct examination, as to his original opinion.

"Objection sustained."

It will be noticed by this Court that Mr. Flipper was in the habit of giving his opinion very freely as a witness upon questions of law as well as of facts, and that I never objected to his doing so, but permitted counsel for the Government to lead him as much as he pleased in addition.

It is a significant fact that the moment Mr. Flipper was pressed upon cross-examination for his opinion, either upon matters of law or matters of fact, the attorney for the Government quickly became alarmed.

I submit that this was a perfectly proper question to ask Mr. Flipper as an expert surveyor, for the reason that the question as to whether any grant can be located or not from the title paper depends largely upon the construction placed upon the words contained in it by the surveyor, who undertakes to locate it.

By bearing in mind the fact that the south center monument of the farming lands was already placed just above the ruins of Calabasas and close to the large meadow on the river which is spoken of by Mr. Flipper, and bearing in mind the fact that Legarro, the Governor of the Mission, was claiming that his lands extended to a point beyond and above the Yerba Buena, and bearing in mind the further fact that he desired to include the lands in the valley of the Potrero as far as the monument above the Cienega

Grande, it is apparent that when Leon, in compliance with the wishes of Legarro, selected as the center of the stock ranch "the meadow by the riverside" he must have meant some place which was very well known by that designation or name at that time. What place is more likely to have been known as the meadow by the riverside, when talking of the ruins of the Mission of Guebabi, than the meadow lands which had always been cultivated by the natives of said Mission of Guebabi, and which are the first agricultural lands below the mission which can be irrigated by a ditch taken from the river? History tells us that these missions had great trouble in maintaining themselves against the savage Apaches, and it is natural to suppose that those in charge of the mission would select the nearest available lands for farming purposes, and we have seen by the foregoing testimony of witnesses that this was done as a matter of fact.

The intelligence of Mr. Flipper led him to adopt this view without any question in the year 1890 in his sworn report, which he had supposed was confidential and would never see the light of day at the time he was testifying in his direct examination in this case. In assuming that Leon meant the large meadow near Calabasas as the center of this stock ranch, Mr. Flipper was simply carrying out his preconceived idea that the only way to defeat this grant is by making it appear to be indefinite and uncertain and not locatable. (R., p. 227.)

It is not reasonable to suppose that the center of the stock ranch would be placed at a point almost adjoining the south boundary of the farming lands, as it was usual under the Spanish laws in making all these surveys to adopt some point as a center and to run from that point toward each of the cardinal points of the compass, as we have already seen and as the Government admits.

But Surveyor Leon tells us that he ran a line toward the north from this meadow, which was taken by him as the

center, and that the line terminated at the same place or site for a monument which was fixed to the agricultural lands, the same being in one body, and that this line was 80 cords long (R., p. 270). We have already seen that in running from the church of the Mission of Tumacacori to the north center monument Leon went a distance of about $1\frac{1}{2}$ miles, and called this distance 50 cords, and hence we are justified in believing that in running 80 cords he would at least go $2\frac{1}{2}$ miles, even if he was exactly accurate in his measurements. If we adopt the meadow suggested by Mr. Flipper as the center of the stock ranch, we could not run more than one mile at the utmost from any point in said meadow on the river before reaching the ruins of Calabasas and passing beyond the south center monument of the farming lands.

It is far more probable that the meadow adopted by Mr. Bonillas is the correct one.

This is further demonstrated by the fact that Leon tells us that he ran from this same meadow 55 cords to the Vado Seco (R., p. 270), which would make the distance from the center of the stock ranch which was taken by Leon to the Vado Seco nearly one-third less than the distance from said meadow which was taken as the center point to the north center monument, which was 80 cords. By referring to Mr. Bonillas' map it is apparent at a glance that the distance from the meadow which was adopted by Mr. Bonillas as the center to the Vado Seco is almost exactly one-third less than the distance from said center point to the north center monument.

Whereas if we accept the meadow which was suggested by Mr. Flipper as the center of this stock ranch, the distance from that point to the north center monument would only be about one-tenth part of the distance from said center to said Vado Seco, which place is so very well known that no mistake could possibly have been made as to its location (R., pp. 68, 80, 174), and the location of which, furthermore,

has been admitted to be correct by the Government and by the testimony of Mr. Flipper, whereas Leon tells us that he ran 80 cords to the north center monument and only 55 cords to said Vado Seco.

It will also be noticed that the surveyor Leon, at page 271 of Record, states that the Potrero lies in the direction of the west from the center monument of the stock ranch, and an inspection of Mr. Bonillas' map will at once show that the Potrero does lie in the direction of the west from the meadow taken by him as the initial point or center of the stock ranch, whereas it lies almost directly south of the meadow suggested at the present time by Mr. Flipper as the center of the stock ranch, but which was never thought of by him at the time he made his sworn reports in 1890 for the benefit of himself and other squatters.

It seems to the writer, therefore, that it is conclusively established by the evidence that the meadow taken by Mr. Bonillas as the center or initial point of the stock ranch is the exact place which is called for in the title papers of 1807.

NORTH CENTER MONUMENT (STOCK RANCH).

Leon tells us at R., p. 270, that "being at the initial point designated of their land, and placing the compass, properly adjusted, a direction was taken to the north, in which direction were measured 80 cords, which was carefully measured and counted, the line terminating at the same place or site for a monument fixed for the agricultural lands, the same being in one body."

Mr. Bonillas tells us at R., p. 113, that "the title papers said that the north center monument of the estancia was exactly the same point where the south center monument of the agricultural lands was; and it furthermore states that the agricultural lands and the lands of the estancia, or lands for stock-raising purposes, formed one body. So I took the same point as the north center monument of the estancia."

SOUTH CENTER MONUMENT (UNCHANGED. STOCK RANCH).

Leon tells us, at R., p. 270, that—

“Returning to the center, the direction was taken to the south, in which direction were measured and counted, with equal care, 55 cords, the line terminating on the very slope which descends into the lowlands or water-course that runs toward the Vado Seco (dry ford or crossing), where I ordered another mound of stones to be placed as a landmark, and it was so placed,” etc.

Witness Bonillas.

At R., p. 113, Mr. Bonillas testifies as follows:

“The south center monument is said to have been established on the very slope which descends into the lowlands or water-course that runs towards the Vado Seco ahead of the town or ancient Mission of Guebabi. The point in the Santa Cruz river called the Vado Seco or dry ford is a well-known point; so I went to this Vado Seco, and it is very remarkable that a very wide water-course—wash—flows right at that point of the river, so I went up that water-course and I looked for the monument on the edges of the valley there, and right close to a place where the old trail used to pass by I was told by some old people that were with me (among them Don Jesus Maria Elias and people who knew that country very well) that in those old times they did not travel along the valley very much. They always went on the edges, and this was the old trail from Tubac and Tucson to Santa Cruz, and on the slope there descending into this wide water-course which runs to the Vado Seco, exactly in accordance with this description, I found a very old monument of loose stones.”

The witness then identified the photograph marked Exhibit Y, which is in the record as being a photograph of said Vado Seco or dry ford or river crossing, and he also identified the photograph marked Exhibit Z, which is in the record as being a photograph of the old monument just de-

scribed by him as being on the edge of the slope where it descends into said water-course or dry ford. (R., p. 114.)

Witness Flipper.

At R., p. 201, Mr. Flipper states that the monument at the Vado Seco is properly located on the map of Mr. Bonillas; but he attempts to weaken the force of this admission by stating that in crossing the river as you rise the mesa on the other side is another pile of stones, but that it is not a large one.

At R., p. 225, however, Mr. Flipper admits, under cross-examination, that this small pile of stones referred to by him on the opposite side of the river is simply one of those little piles of stone that he has seen in thousands of places in mountain passes and streams to mark the place where the trail comes out of the river on the other side so that a traveler will not get lost, or to mark the place where one trail turns off from another.

This testimony was only dragged out of him, however, by leading questions, and I respectfully invite the attention of this Court to the contrast between the statements of this witness under his direct and under his cross-examination as being one more exhibition of the want of good faith displayed by this special agent of the Department of Justice in testifying as a witness upon this case.

At R., pp. 152, 153, the witness Collin Cameron corroborates the testimony of Mr. Bonillas in his description of the Vado Seco and the monument in photograph, Exhibit Z.

At R., p. 153, Mr. Cameron states that the Vado Seco "is just a low place or dry place in the river, no water flowing there except in flood time. The river is very wide and the sand is deep there, and the wagon road crosses the river at that particular place—the Santa Cruz wagon road."

Mr. Cameron states further that this place has always been so.

At R., p. 174, witness Thomas Bayze states that—

“He knows the place called Vado Seco; that it is a crossing of the river, a dry ford, and that it is dry all the year, except when there is a freshet in the river from the rainy season, and that he first saw the monument represented by photograph, Exhibit Z, in the year 1890, and it had a very old appearance, and that it is east of the old Santa Cruz trail, right on the side of it, about 100 feet away.”

Witness Jesus Maria Elias also identified Vado Seco and monuments. (R., p. 68.)

WEST CENTER MONUMENT (STOCK RANCH).

Leon tells us at R., p. 271, that, starting at the initial point—

“A direction was taken to the west, in which direction were measured carefully and counted 38 cords, the line terminating on the slope of the highest hill seen from the Potrero, at which point I ordered to be placed and there was placed another mound of stones; whereupon the measurements were concluded as well of the agricultural lands as of the two sitios of estancia (stock rancho) to the satisfaction of the officers,” etc.

It will be noticed that Leon refrains from stating that these measurements were concluded to the satisfaction of any other person or persons than the officers; and we see from the title papers that Legarro, in representation of the petitioners for whom the lands were being surveyed, protested against the survey and insisted that the lands should be extended to the south, beyond the Yerba Buena, to the monument described in the testimony of the witnesses as being on the boundary of the Buena Vista grant, which belonged to the Romeros, and said Legarro also protested that the lands should be extended on the side of the valley of the Potrero as far as the monument above the Cienega Grande. (R., p. 272.)

Witness Bonillas.

At R., p. 119, Mr. Bonillas testifies as follows :

"The west center monument is described in the title papers as being situated on the caida, or fall it would be ; that would be the literal translation, the descent or fall or slope of the highest loma—that is, the highest hillock that can be seen from the Potrero. Now, you cannot see either the Potrero or any rolling hills that extend to the west of it from the center monument of the estancia at Guebabi at this meadow, but by following a westerly direction at right angles to the course of the valley in an opposite direction to the east center monument there is a gulch that runs up to some high lands lying between the valley of the Santa Cruz and the valley of the Potrero, and by following this gulch up you come to the high lands, and there another gulch rises that runs towards the Potrero, and there you can see further ; you can see this Lomerio or these rolling hills extending to the west, and going down that gulch you come to the Potrero, and you follow to the west and come to this highest loma described in the title papers. On the top of this loma there was a large monument, and on the caida or slope or descent of this loma there is another monument, and this I considered as the west center monument of the estancia. This loma is quite noticeable. It rises above the rest of the rolling hills and is quite a noticeably topographical feature."

The witness identified Photographic Exhibit G 5 as being a photograph of the monument that stands on the top of said loma, and he also identified the photograph in Exhibit H 5 as a photograph of the monument taken by him as the west center monument of the estancia. (R., p. 120.)

Witness Flipper.

At R., p. 200, 201 Mr. Flipper admits on his direct examination that these two monuments exist, as described by Mr. Bonillas, on the highest loma seen from the Potrero, and that the monuments are old.

Witness Collin Cameron.

At R., p. 154, Mr. Cameron testifies that "he knows the location of the west center monument of the stock ranch; that it is on the highest loma that you can see from the vicinity of the Potrero; that he has seen this hill many times from the Potrero, and that there is not the least difficulty about distinguishing which is the highest hill; that he first saw this monument in 1890, and that it is a very old monument, and lies just on the slope of the hill in about the length of the court-room from the top of the hill."

At R., p. 233, Mr. Cameron says, on cross-examination:

"By Mr. REYNOLDS:

"Q. Now, you take a high monument—four or five feet high—down which the water runs to its base, washing away from its base the dirt, and you say the tendency has been to cover them up, whereas ordinary stones imbedded in the ground are being exposed by the elements?"

"A. Yes, sir. Take the west center one of this estancia—it is on the slope where the hill levels a little bit—and the photographs will show you that the debris comes down off the hill and has washed away from some of the natural piles of stones, and if you go there anybody can tell that this particular pile of stones was put there and the others were not."

Witness Thomas Bayze.

At R., p. 176, Mr. Bayze testifies that he knows the west center monument of the stock ranch which was taken by Mr. Bonillas; "that it is west of the old Potrero ranch on the highest ridge looking toward the Pajarita mountains, on the side of that hill; that when he first went to work on this ranch he made his headquarters right in the Cienega Grande, in the house that is on the point of land that is in the Cienega Grande."

EAST CENTER MONUMENT (MONUMENT UNCHANGED). (STOCK RANCH.)

This monument is described in the title papers by the witnesses in 1807. (R., pp. 272 274.)

Surveyor Leon says, returning to the center (the meadow by the river), "a direction was taken to the east, in which direction was carefully counted and measured 27 cords, the line terminating at a hill (serro), and it being impossible to proceed further in this direction on account of the ruggedness of the country, whereupon the parties interested asked me to give them the remainder of the cords in the direction of the Potrero, which was on the west, and consenting to their request as reasonable, I ordered to be placed, and there was placed, at the foot of said hill (serro) of San Cayetana, on the side looking towards the south, another mound of stone as a sign for a landmark," etc. (R., p. 271.)

Witness Bonillas.

At R., p. 115, Mr. Bonillas testifies as follows:

"Next I went to look for the east center monument. It is described in the field-notes of the original survey as being erected at the foot of that side of the San Cayetano which looks toward the south, the survey not being extended any further in an easterly direction on account of the roughness and inaccessibility of the country, and for the further reason that the grantees petitioned the person who was making the survey to add on the western or Potrero side the rest of the lands to which they were entitled on the east. When I read the description I was very much confused, the place called Guebabi being at a considerable distance up the river from Old Calabasas, which is mentioned in the survey of agricultural lands. The Cerro de San Cayetana that I have known is a range of mountains which lies east of these agricultural lands and I would say, yes—almost east of the starting point of these agricultural lands of the Tumacacori Mission (*i. e.*, of the old Tumacacori church). So

when I read that description I said, 'This must be a mistake. That cannot be the mountain which these people meant to describe, where the east center monument of the estancia was established.' Furthermore, I was led to that belief by the fact that in the description they say that they run so many *cordeles* (37, I believe) in an easterly direction from Guebabi, and that measurement terminated at a *cerro*. They do not speak of the San Cayetana mountain there. Then they go on and say that they could not go ahead on account of the roughness of the country; and, furthermore, the surveyor was petitioned to extend the survey to the west or the Potrero side as many *cordeles* as he had failed to go to the east, and then, having established the monument at the foot of the Cerro San Cayetana, they returned to the center. At first they do not mention the *cerro*, and I think they mention it incidentally. I do not believe they meant what is known as the Cerro de San Cayetana, because it is an absurdity.

"The Serro of San Cayetana is a little west of north and quite a distance from Guebabi, and they were going east. They went at right angles to the course of that valley.

"The title papers say that the north boundary of this stock ranch is on the south boundary of the agricultural lands, and that north boundary point of this stock ranch is already quite a distance south, or a little east of south, of that chain of mountains called San Cayetana."

The witness further stated that from his experience in making surveys in Mexico and from his general knowledge of the Spanish language he defined the word *cerro* as a hill or as a mountain of not very great size. (R., p. 116.)

At R., p. 117, Mr. Bonillas says:

"There is another description given to the point where the lands of this estancia reach, and that is in the declaration of these witnesses. They say that the monument on that side was at the Sonoita cañon, upon a mesa mui tendida. I translate that, and from the knowledge I have of the descriptions given in so many title papers, I call that a very gradually sloping mesa.

"The word *tendida* means spread out, as you find the word isolated; without referring to any object; stretched out."

"I was going to say that description I found in some points agrees to a certain extent with the description by the witnesses and that by Surveyor Leon, and I made up my mind that they (the surveyors) did not measure thirty-seven cordeles up to that point, but they simply took a description of the place where this monument was located and said, Well, so much is there and we will let it go for so much; and I went in an easterly direction from the center, following the wide wash or gulch that flows into the river of the valley just above that point of the river valley, and I followed that to the east. I followed that with the direction of that gulch and I looked for a monument, and I didn't find anything that I would call a cerro for a long distance from the valley. There is a series of long, bald ridges which I would call 'cuchillas' or 'lomerio,' but not one of the cerro till I came to the edge or banks of the Sonoita cañon, and there I found some pretty rough country, and there on the edge of the Sonoita cañon and there I found what I would probably call a cerro, and there close to this cerro and descending very gradually towards the valley of the Santa Cruz there is a mesa, as they describe as a mesa 'muy tendida,' and on the edge of the mesa and on the side to the south of this hill, there being between the mesa and the hill a slight depression, there I found a very old monument which, in my estimation, answers the calls of the title papers, and I accept that as the east center monument.

"The mesa I speak of is rather narrow, in the sense that it extends towards the Santa Cruz valley. It properly ends on the side where the monument is, and traveling from there in the direction of Guebabi, it ends there where the gulch forms a cañon; then you have afterwards some low land, and after that cañon you come right from the mesa and follow the gulch and you come to the center point where they started this survey. The mesa runs straight down there," says Mr. Bonillas. (R., p. 117.)

At R., p. 119, Mr. Bonillas says:

"From this monument going east the country is very rough hills, and the titulo says they didn't go any further because the country was very rough.

"The cerro I speak of looks something like a truncated

cone. It is rounded up on top and the hill is circular or round. It is joined onto this mesa on the edge of which this monument is, and then it descends abruptly towards the Sonoita cañon, and it is cut off from the rest of the hills. It stands alone, just connected with the mesa, the edge of the mesa forming the water-shed between the Santa Cruz valley and the Sonoita cañon. It rises to a considerable extent above the mesa on the mesa side."

At R., p. 133, the witness identified Exhibit E 5 as a photograph of said serro.

Exhibit F 5 was identified as a photograph of said east center monument taken from above the monument and looking down the mesa, and Exhibit D 5 was identified as a photograph of said east center monument taken from on a level with the monument.

At R., p. 134, Mr. Bonillas stated that he knew where the San Cayetana mountains were at the time he was running this line, but knew there was no sense at all in going to the Serro San Cayetana, as it was an absurdity, and he therefore struck the words of "San Cayetana" out of the description and ignored those two words in making his survey.

Witness Thomas Bayze.

At R., pp. 173 and 177, Mr. Bayze corroborates the testimony of Mr. Bonillas as to the topography of the country, from the center monument to this east center monument and the existence and location of said monument, in every particular.

Colin Cameron.

At R., p. 150, Mr. Cameron states that he knows the east center monument of the stock ranch, and that it is close by the Sonoita cañon, at the edge of a mesa and just behind or in front of a big hill, close to the place known as Sanford's Station, in said cañon; that the Sonoita cañon all the

way up and down is very narrow ; that all along the cañon it used to have trees in it ; that he read in Barrett's History of the Boundary Survey that when he attempted to go down that cañon he failed ; that they undertook it and could not get through with their teams and had to go by way of the Babacomari and the Canailla and by way of Santa Cruz.

The writer desires to call attention at this point to the fact that in order to proceed westward with the boundary survey by going around by the way of Santa Cruz it was necessary to travel a very great distance, to wit, at least 100 miles, out of their way in order to get into the neighborhood of Guebabi and Calabasas and Tubac before proceeding and in proceeding with their survey toward the west. This fact alone ought to conclusively establish the fact that the pile of stones taken by Mr. Bonillas as the east center monument of this stock ranch precisely and exactly fits the statement made by Surveyor Leon that he did not proceed further toward the east from said point "on account of the great roughness and inaccessibility of the timber and abruptness of the hills."

We see that the description of the country adjacent to the San Ceyatana mountains given by Mr. Flipper does not fit the description of the place taken by said Surveyor Leon as the east center monument of said stock ranch, as Mr. Flipper himself states that it is not heavily timbered, and in reaching those San Ceyatana mountains from any possible direction the country might be rough, but it is clearly not "precipitous."

The word precipitate is defined by Webster as meaning to throw headlong ; to fall or cast to the bottom. The word precipice is defined as any steep descent. It will be noticed that it is applied to a "descent" as distinguished from an "ascent." The word precipitous is defined as very steep, abrupt.

Mr. Flipper admits that you reach the pile of stones taken by Mr. Bonillas as the east center monument by traveling

over a mesa mui tendida from said meadow taken as the center of the stock ranch, and that when you reach this east center monument and the big hill or serro you are on the edge of the Sonoita cañon, and that the country is very precipitous immediately beyond that toward the east, dropping into said Sonoita cañon by a steep descent down which it would be almost impossible to take a horse. Hence it agrees perfectly with the description of Leon if we accept the corrected translation which the learning and intelligence of Mr. Flipper has presented for our consideration as the correct one.

Witness Flipper.

At R., p. 195, Mr. Flipper states that he translates the description of the survey of the east center monument of the stock ranch by Surveyor Leon as follows, to wit:

"I placed myself at the point pointed out for the center of these lands, and, having set up the compass in good adjustment, a wind to the east was taken along which they went, measuring and scrupulously counting 27 cords, which terminated on a hill, and it being impossible to advance further on account of the great roughness and inaccessibility of the timber and abruptness of the hills, the parties in interest requested that the remaining cords be given them in the direction of the Potrero, which is in the direction of the west, and, agreeing with this application as regular and admissible, I ordered placed, and there was placed, at the foot of said serro San Cayatana (hill), on the side that looks to the south, another pile of stones to make the place for the monument."

The only change which has been made by Mr. Flipper from the original translation as found in the record is to add the words "inaccessibility of the timber." The remainder of the translation is substantially the same as that given by Mr. Bonillas. The testimony of Mr. Colin Cameron, just preceding, on this point, shows that this change which was made by Mr. Flipper in the translation for the obvious pur-

pose of making the points taken by Mr. Bonillas for the east center monument seem to fit the description given in the title papers with less exactness, does not accomplish said purpose, but that, on the contrary, this improved translation makes the place adopted by Mr. Bonillas fit the description given in the title paper with even greater preciseness and accuracy as to minute details than it did before, if such a thing is possible.

At R., pp. 196, 197, Mr. Flipper translates the testimony of the witnesses in regard to this east center monument and the monument beyond the Yerba Buena and the monument above the Cienega Grande in exactly the same language which appears in the translation of their testimony in the title papers at R., pp. 272, 273.

At R., p. 203, Mr. Flipper identifies Exhibit E 5 as a photograph of "the top of a big hill by the Sonoita cañon; it is a little west of north—not certain whether east or west, but it is north of the east center monument of the estancia (stock ranch)."

"That is the large hill which lies to the north of the present location by Mr. Bonillas of the east center monument."

In other words, Mr. Flipper states that the pile of stones taken by Mr. Bonillas as the east center monument lies "on the side that looks to the south" of said "big hill by the Sonoita cañon;" which corresponds exactly with the description given by Leon of the place where it was put.

At R., p. 203, Mr. Flipper identifies D 5 as a photograph of the pile of stones taken by Mr. Bonillas as the east center monument.

At R., pp. 203-4, Mr. Flipper testifies that the old wagon road to Fort Crittenden runs up the big dry gulch toward the northeast from Guebabi and strikes a ridge and then runs nearly southwest of this east center monument along the foot of this ridge to a point a little over a mile from said

east center monument and then runs around said big hill on the east side of it and into the Sonoita valley.

At R., p. 204, the following question by Mr. Reynolds and answer by Mr. Flipper, respectively, occur:

"Q. Would there be any difficulty in surveying a line over across there (from the east center monument on toward the east into and across the Sonoita valley, the direction in which said Surveyor Leon was proceeding at the time he stopped on account of the inaccessibility of the timber and precipitousness of the hills) on account of the inaccessibility of the timber and hills, and so on?

"A. No, sir; you have gone over all the rough country when you get to this point (*i. e.*, coming from the meadow taken as a center by Mr. Bonillas and running to the pile of stones taken by him as the east center monument). There would be no difficulty in the world (*i. e.*, in proceeding on from that east center monument into and across said Sonoita cañon with a survey). That section of the country from here on and from the center of the estancia up to this point is not one-tenth as difficult and rough as that from the same center monument of the estancia to the west monument. The foot-hills of the Benedict mountain there is about as rough a piece of country as there is in southern Arizona. It is broken up with gulches and is rocky." * * *

"I know the mountains of San Cayatana, which are north of the mouth of the Potrero (at old Calabasas, the north center point of the stock ranch and south center point of the agricultural lands)."

"The condition of the country around the foot of those San Cayatana mountains is rough and broken. It is not heavily timbered, but when you get into the foot-hills there is quite a quantity of mesquite and catclaw. As compared with the country over at the east center monument, it is much more rugged and inaccessible and much more precipitous."

At R., p. 210, Mr. Flipper admits, under cross-examination, that to run a line toward the east from either the meadow at the mouth of the Potrero, near Calabasas, which is suggested by himself as the center of the stock ranch which was taken by Leon, or from the meadow which was

taken by Mr. Bonillas as the center, would be "absolutely impossible," and that the San Cayatana mountains "are north of the old ruins of Calabasas," and that the meadow suggested by himself as the center point is inside of the southern end of our map of the farming lands of Tumacacori, and that therefore to run north from that point for the purpose of getting your stock ranch would be an impossibility, as it would be simply taking in what you already had.

At R. p. 220-'1, Mr. Flipper testified as follows:

"Q. The word tendida is also used to mean extended or drawn out, is it not?

"A. Yes, sir; it is.

"Q. And it would be a very proper term to apply to a mesa that was long and narrow?

"A. It would.

"Q. A mesa mui tendida might mean a long, narrow mesa?

"A. A very long and narrow mesa; yes, sir."

At R., p. 224, Mr. Flipper testified, under cross-examination, as follows:

"Q. Have you ever traveled from that monument (the pile of stone adopted by Mr. Bonillas as the east center monument of the stock ranch) down to Guebabi (the meadow of Guebabi which was taken by Mr. Bonillas as the initial or center point of the stock ranch)?

"A. Yes, sir; but not in a direct line.

"Q. You never went down that mesa?

"A. Not all of it; no, sir.

"Q. From where the mesa begins, as far as you can see, could not a man drive easily with a team of horses and wagons?

"A. On that mesa?

"Q. Yes, sir.

"A. Undoubtedly.

"Q. Or with a buggy?

"A. Yes, sir; he could.

"Q. And that would drop into the cañon at the end of

that mesa about one-half or two-thirds of the way down to Guebabi, would it not?

"A. It would; yes, sir.

"Q. Is it not very easy to drive a team up this cañon and then turn off another cañon that turns to the left and drive clear right straight up to within a quarter of a mile of this monument?

"A. Yes, sir.

"Q. With a team?

"A. Yes, sir.

"Q. And you call that very rough country?

"A. That is just what I say—that it is not rough.

"Q. Didn't you say that the country between this monument, the east center monument, and the Benedict ranch was about the roughest in that whole section of country?

"A. No, sir; I did not. I said the country from the center of the estancia. I especially took pains to say that the foot-hills of the Benedict mountain was the roughest part in southern Arizona, and if you will have my testimony read you will see that I said that.

"Q. I misunderstood you.

"A. The country you have just been talking about, going to the east center monument (from the meadow taken by Mr. Bonillas as the center of the stock ranch), we drove over ourselves in a carriage.

"Q. After you get up there does not the country become much rougher?

"A. Going down it is more precipitous.

"Q. It would be impossible to go down from that end of the mesa?

"A. It would be impossible with a wagon; yes, sir.

"Q. And almost impossible with a horse, wouldn't it?

"A. Yes, sir; it is precipitous.

"Q. And after you get down there the cañon is all broken up?

"A. Yes, sir; it is full of gulches, but you can get around down there better than you can come down.

"Q. Yes. In traveling around surveying at the end of the day's work, after you have been over a smooth mesa like that, it would look pretty rough down there, wouldn't it?

"A. It would; yes, sir."

It seems to the writer that the appellant could safely rest the location of said east center monument upon this cross-examination of Mr. Flipper alone.

Exactly how Mr. Flipper reconciles his statement on cross-examination, "That is just what I say, that it is not rough," in referring to the country between the center monument and the east center monument, with his statement upon the direct examination by Mr. Reynolds, that when you reach the east center monument as taken by Mr. Bonillas "you have gone over all the rough ground when you get to this point," and "there would be no difficulty in the world" in proceeding on toward the east from that east center monument into and across said Sonoita cañon, is more than this writer can understand.

MONUMENT BEYOND THE YERBA BUENA (HARRIS' MONUMENT,
AND PRACTICALLY UNCHANGED). (STOCK RANCH.)

This monument depends for its location upon the testimony of the witnesses, as found in the title papers of 1807. (See R., pp. 272-274.)

The testimony of these witnesses appears under the evidence set forth by me in establishing the east center monument of the stock ranch.

Witness Bonillas.

At R., p. 114, after completing his statement about the location of the monument of the Vado Seco by Leon's survey, Mr. Bonillas says :

"The title papers state, furthermore, that after this monument was established there (at Vado Seco) and the other monuments that they (the Surveyor Leon) did establish that the parties interested in having this survey made said that the lands of their mission extended further south, and that they could prove that, and that they wanted the rest of the lands that they had owned and that had been paid for

by moneys belonging to the mission, and so the declarations of three witnesses were taken, and these witnesses testified that these additional lands extended to a place beyond the Yerba Buena, a point well known on the river, and to the boundary line of the ranch at Buena Vista, then belonging to the Romero. I went up the river to Yerba Buena and from there further up, and I was shown this monument, and I found a very old monument there with a stake mark, no doubt by an American surveyor, and I found it had been marked by Mr. Harris, who I believe to have made a survey and had adopted that as the south center monument of the Guebabi and Calabasas (this grant).

"I understand that this survey by Mr. Harris was ordered by the Surveyor General at the time he recommended the confirmation of the grant."

The witness then identified the photographs, Exhibit A 5 and Exhibit B 5 and Exhibit C 5, found in the Record as photographs of said monument, and said:

"The stake (of Mr. Harris) is in the old monument and I did not want to disturb its appearance, so I set my trigonometric point just on one side of it and put new rocks there, and that is where that flag shows in the photograph."

"Q. You say an old monument. Now, how old a monument do you mean?"

"A. Well, that monument might be 100 years or might be 200 years, for all I know. In its appearance it seems to be a very old monument. The rock is weathered and you see it disintegrated, and you see the base of it covered by sand. Some of the rocks—large rocks—pretty well covered and some of the rocks are weathered—have a kind of moss on them.

"Q. Did you study geology any?"

"A. Yes; I had to.

"Q. Did you take a course in geology?"

"A. Yes, sir.

"Q. From the appearance of this monument, where would you say the rocks came from?"

"A. It is built of granite rocks.

"Q. Where did they come from?"

"A. Right from the ridge where the monument is. It

seems to be the general formation of that section of the country there.

"Q. Might not that monument have been built there by Mr. Harris originally?

"A. It is not possible that it was, because I understood that Mr. Harris had made a survey some time in the 70's—that is, some years previous, but I don't know exactly how long—and if he had built that monument the rocks would show it. The marks on the rocks would show it.

"Q. Marks for what?

"A. The water marks. The rocks are in the ground and when they are picked up the water marks remain on them for years and years. I have seen a monument that I built in 1883 and 1884—monuments—and I have seen them within the last five or six months and they are standing just as I built them, and the water marks are there, and they are 10 or 12 years old.

"Q. Now, by the term old monuments, as used by you in each instance of which you have spoken of monuments being old, what did you mean by that?

"A. I meant such monuments as I have described here—old monuments of loose stones that have every appearance of age, covered by sands at the base, and in some instances trees or shrubs growing in them, and the rocks are weathered, and you see the position of the rocks has not been disturbed. You pick up a rock and you see the marks—the shade is different from the other rocks, and the contact, and you notice that it is old." (R., pp. 114, 115.)

At R., p. 130, Mr. Bonillas testified, under cross-examination, as follows:

" (By Mr. REYNOLDS:)

"Q. So you took, in making your survey and in fixing that south center monument—you took the testimony of those witnesses that had been taken before the survey was made, in 1807, and substituted it for that survey, did you?

"A. I did not take it because this testimony had been taken before or after the survey, but I took it because in the granting clause of this title the title is granted to the lands included in the survey and the additional lands petitioned for, whether the testimony was taken before or not, and that is the reason I took it."

Witness Flipper.

At R., pp. 202 and 203, Mr. Flipper testified, on direct examination, that the photograph, Exhibit B 5, is a photograph of the south center monument of the estancia, and that the top of this monument has been built up.

At R., p. 222, on cross examination, upon the photograph B 5 being handed to him, Mr. Flipper testified that it is a photograph of the south center monument of the stock ranch, and that this monument is commonly known as Harris's monument. The following questions and answers were then given to and made by said witness:

"Q. You stated that there was some change in that monument (Harris's monument), that some rocks had been moved, as I understand you?

"A. No; I say the base of the monument appears to be old, and the rock on top appears to have been placed there afterward. I don't mean to say the monument has been varied.

"Q. As to the rocks placed on top, aren't the rocks only immediately surrounding the poles—those shown on the left-half side of the photograph, excepting the part to the right-hand side, to the mesquite pole there—in the original condition in which it was?

"A. To the best of my recollection, the only new rocks on that monument are those.

"Q. Those to the left?

"A. Just the top?

"Q. Yes; those to the left-hand side on the top.

"A. Yes, sir.

"Q. The right-hand side of the monument would be in its original condition, then?

"A. Yes, sir; that is what I meant to testify."

Counsel for the Government seemed to have found considerable amusement in referring to the many changes which were made in the monuments of this grant before the photographs which are in the record were taken; but the testimony shows that this monument above the Yerba

Bueno and the monument above the Cienega Grande are the only ones upon which any rocks have been changed or moved, and the testimony of Mr. Flipper in regard to the changes of this monument is a fair sample of his testimony throughout this case, and we shall presently see that the change in the monument above the Cienega Grande was of almost the same insignificant character as the change in this one.

The witness Colin Cameron identifies this monument at R., pp. 153, 154.

The witness Thomas Bayze identifies this monument at R., pp. 174, 175.

The witness Jesus Maria Elias identifies this monument at R., pp. 68, 69.

MONUMENT ABOVE THE CIENEGA GRANDE.

This monument is also described in the testimony of the witnesses in 1807, at R., pp. 272-274.

Witness Bonillas.

At R., p. 120, Mr. Bonillas testifies as follows :

"The title papers, besides these monuments that I have described, in the declarations of these three witnesses it is stated that there is another monument besides these cardinal monuments I have described, and on the Potrero side—that is, to the south—the lands reach or extended to a point above the Cienega Grande or above the large marsh. This large marsh of the Potrero is very well known now and used to be much better—used to be much larger than it is today because a great deal of it has dried up, as I have heard from a great many old people who have traveled through there. Above the Cienega Grande they say there stood a monument there in that place, so I looked for it, and I thought I found the identical monument that they referred to—a very large monument to the south of the Cienega, on the low hills that stand to the south and, as you might say, beyond or above the Cienega Grande."

Being shown two photographs, Exhibits I 5, which appear in the record, Mr. Bonillas said:

"Yes, sir; that is the monument above the Cienega Grande. I think some rocks have been picked up around here that were fallen down and have been put on top of it; but the base is all there, and you can see that it is a very old monument just from the base of it."

It will be noticed that Mr. Bonillas very frankly called attention to the change in this monument upon his direct testimony.

Witness Flipper.

At R., p. 202, Mr. Flipper testifies on direct examination as follows:

"Photograph I 5 is a photograph of the monument above the Cienega Grande that has been piled up. I have seen it when it was much smaller than it is here.

"I think the first time I saw it was about 1887. It was not as large as that then. The top was not on it."

On cross-examination, at R., pp. 205, 206, Mr. Flipper says:

"I did not say that I saw any of the monuments prior to this time (February 19, 1894) except the one above the Cienega Grande. That was shown to me by Mr. Charles Altscher, who claimed a tract of land which he said was between the Calabasas and Nogales, and he took me out there and showed me that monument and told me it was the monument of the Calabasas grant. At that time I knew nothing whatever of the Calabasas grant."

"I have read the title papers of the Nogales grant."

"Q. Don't they state that there is about 1,000 feet between the north monument of that grant and the south monument of the Calabasas grant?"

"A. 1,000 steps, it says. At that time I had seen none of the papers in either case—that is, of either grant."

Witness Collin Cameron.

At R., pp. 153-'4, Mr. Cameron testified, upon direct examination, as follows:

"I know the monument above the Cienega Grande and have known it since 1890. It was an old, old monument, fallen down, the first time I saw it. It was an old, old monument, with stones that are now piled on top of it lying at the base of it, and more than half covered up in the earth, as the present appearance will show they were pulled out of the ground; but the base of the old monument there now shows that it is an old monument and sunk in the ground."

It will be noticed that this witness also frankly stated the condition of this monument, as to changes in it, upon his direct examination and before Mr. Flipper had been upon the stand. This is the only monument on which any of the stones have been moved except the Harris monument, just before described. (R., p. 154.)

Mr. Cameron testifies at R., p. 162, that about one-third of the top of this Cienega Grande monument is new, and consists of stones which were lying around the base of the monument and which he placed on the top of it, so that he would be able to see the monument from the public road, which runs close by.

Mr. Cameron was manager of this ranch for the appellant at the time he piled these stones on top of said monument.

The witness Bayze identifies this monument at R., p. 175.

The witness Jesus Maria Elias identifies the Cienega Grande of the Potrero as a place known by him by that name "since he arrived at the age of reason and could pronounce names, to mention them" (R., p. 69.) It will be remembered that this witness was born at Tubac and lived at Calabasas until 1835. (R., p. 61.)

No single one of the hundred or more squatters who are

on this grant disputed the fact that each and all of the places taken by Mr. Bonillas as being the places called for in the title papers are well known to the present day by these names, and that they are located at the points designated upon said map of Mr. Bonillas, or that the monuments or piles of stone described by him as representing the boundary points of this grant exist at those points and are unquestionably of ancient origin.

In the case of *U. S. vs. Hancock*, 133 U. S., 193, speaking through Justice Brewer, this Court said :

" It is obvious that the confirmation was of a tract with specified boundaries, and as such covered all the land within those boundaries, irrespective of quantity, and this, notwithstanding there appeared in the prior proceedings statements that the tract contained a certain amount, ' a little more or less,' which amount was very much less than that included within the boundaries."

Respectfully submitted that the validity and the boundaries of this grant are fully established.

Respectfully submitted.

FRANCIS J. HENEY,
Attorney for Appellant.



No. 119.

FILED.
MAR 19 1898
JAMES H. MCKENNEY,
CLERK

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

Filed Mar. 19, 1898.

No. 119.

WILLIAM FAXON, JR., TRUSTEE, ET AL., APPELLANTS,

vs.

THE UNITED STATES, GEORGE W. ATKINSON,
ET AL.

ADDITIONAL BRIEF FOR APPELLANTS.

LOUISIANA RULE ON CONSTRUCTION OF GRANTS.

Filed by leave of the court.

The rule of construction by which it must be determined whether a grant is one of quantity or one of specific boundaries, under the Spanish laws as applied in Louisiana, is exactly the same as the rule of the common law as laid down by this court on the same question.

That rule is well expressed by Mr. Chief Justice Marshall in the case of *McIver vs. Walker*, 9 Cranch, 173, holding that if marked trees and corners be found conformably to

the calls of a patent, or if water-courses, mountains, or other natural objects be called for, distances must be lengthened or shortened and courses varied so as to conform to those objects.

Article 2470 of the Louisiana Code provides that if the quantity sold comes short of the quantity expressed by one-twentieth, the purchaser can recover the diminution if the sale was not *per aversionem* (i. e., if the sale was not by specific boundaries).

In *Boyce vs. Cage*, 7 An., 672 (La.), the supreme court of Louisiana says:

"To constitute a sale *per aversionem* (i. e., by specific boundaries), there must be either a distinct or separate object described, such as the Manor of Dale, an island, an enclosed field. A sale is also considered *per aversionem* when it is for a total sum, and assigns to the land sold existing visible boundaries, such as rivers, high-ways, fences, *pieces of stone*, iron, or wood, showing the starting point and direction of the dividing line with the adjoining tenements. These last sales are held to be *per aversionem* on the presumption that the parties to them have their attention fixed rather upon the boundaries than the enumeration of quantity."

Citing *Fisk vs. Fleming*, syndic.

This rule has been universally followed by the supreme court of Louisiana.

The case of *Hoover, tutor, vs. Richards and Wife*, 1 Robinson, 34, which was referred to by Mr. Justice White upon the oral argument of this case as apparently holding otherwise, in no way limits or modifies the rule of construction set forth in *Boyce vs. Cage* as I read it.

In the first place, all of the language of that decision is dictum, in so far as it applies to the question of the proper construction to be given to the description of the lands as found in the commissioners' certificate, under which the defendants claimed title to the land in dispute, for the reason

that the court decided the case upon the ground that said certificate was not a final and ultimate proof of the title, but that it contemplated a survey to be subsequently made in accordance with its terms, and that when said survey was made the grantee, Harman, received a patent for the quantity to which he was entitled under said certificate.

The court proceeds to say, however, that had it been proven that *under said survey* said Harman had been given the whole of the land between the two adjacent proprietors, amounting to more than three hundred and twenty arpents—the quantity called for in said certificate—the case might have been different, and that probably the title of Harman to the whole would have been regarded as complete from the date of the act of Congress confirming the report of the commissioners. *It would then have been a grant by definite and specified boundaries.*

It will be noticed that the description of the land which was given in the certificate gave natural landmarks or fixed, permanent objects as the boundaries of the grant for only three sides, and that the fourth side was left open and undetermined by any fixed, specific point or landmark, but to be shortened or lengthened upon a sliding scale, for the purpose of giving to the grantee a definite quantity of 320 arpents of land. The land was described as situated "on the west margin of the Mississippi river, bounded on the upper side by land of Samuel Phipps and on the lower by land of John Sandal, having a front on the river of about 8 arpents, with a depth of 40, so as to include the aforesaid quantity of 320 superficial arpents," etc. The court said:

"The last expression, viz., '*so as to include the aforesaid quantity of 320 superficial arpents,*' would seem to control the previous one setting out the adjacent proprietors and limiting the grant and superficies to 320 arpents situated between those two tracts."

The court did not decide the case, however, upon this ground, as I have just stated; and it is apparent that the

presumption that the parties had their attention fixed upon the specific boundaries or landmarks, as opposed to the question of quantity, cannot be entertained, *for the reason that on one side of this tract there was no specific object or fixed place to attract attention*; but, on the contrary, the granting paper specifically states that the line from the river front between these two ranches on the sides was to run forty arpents, *not to a fixed monument or landmark*, but "so as to include" between said two ranches and the front of the river "said quantity of 320 arpents."

The case of *U. S. vs. Fossat*, 20 Howard, 413, is identical with this case referred by Mr. Justice White. In the Fossat case a Mexican grant in California was under consideration; the quantity was given, and the southern, western, and eastern boundaries were designated by fixed natural landmarks, and the courses, distances, and quantity were also mentioned. This court held that it must be construed as a grant by quantity, with the southern, western, and eastern boundaries as designated in the title papers, and by using a sliding scale in order to fix the quantity named within said boundaries in determining the length of the side lines from south to north.

In the case of *Phelps vs. Wilson*, 16 Louisiana, 185, the court held that the sale of a body of land as a section which has limits mathematically fixed and established and generally known is not a sale *per aversionem* (by specific boundaries). There the sale was of a certain number of acres described according to survey lines which had been mathematically fixed, but which, as a matter of fact, were only imaginary lines upon the earth's surface and did not constitute any fixed or permanent object which it might be presumed the parties fixed upon rather than upon the question of quantity.

In *State vs. Buck and Fruit Co.*, 46 La. An., 670, the court says:

"A sale in which specific boundaries are given is a sale *per aversionem*, or a sale from one fixed boundary to another,

which includes all the ground between the parties mentioned, whether the measure be correctly stated or not, the calls for boundary controlling the enumeration of quantity."

Citing *Harman's Heirs vs. O'Moran*, 18 La., 526; *Prejean vs. Giroir et al.*, 19 La., 422; *Hoover, tutor, vs. Richards*, 1 Robinson, 34; *Saulet vs. Trepagnier*, 2 Robinson, 357; *Labichie vs. Jahan*, 9 Robinson, 30.

It will thus be seen that as late as the year 1894 the supreme court of Louisiana cites the very case which was referred to by Mr. Justice White as holding to the rule of construction for which I am contending.

In the case of *Lodge's Lessee vs. Lee*, 6 Cranch, 237, it was held by this court that the sale of an island by name, with the addition of courses and distances and quantity, was a sale by specific boundaries and carried the entire island. ✱

In the case of *Mitchell vs. Smale*, 140 U. S., 374, this court held that the grant was one by specific boundaries and not by quantity, although the grantee had purchased and paid for only 4.53 acres, whereas the grant within the district of Chicago contained 25 acres additional of dry land outside of the survey, as well as a large area of land under the lake in front of the bank. This additional land existed at the time of the survey and patent.

In that case the grantee received an excess of about six times the quantity paid for by him, and the grant was seven times as large as the quantity it was described as containing. The patent described the land as follows:

"The S. W. fractional quarter of fractional section 20, in township 37, range 15, in the district of lands subject to sale at Chicago, Illinois, containing 4.53 acres according to the official plat and survey of the said lands returned to the General Land Office by the surveyor general."

In this case the sale was made by public auction for a lump sum and not at a rate per acre or sitio, as is shown by the recital in the title paper as to the statement made by

✱ In *Slurgeon v. Floyd* 3 Rich. (S.C.) 80. grant of 18900 acres according to courses and distances was confirmed as a grant by specific boundaries although actually

the public crier in announcing the sale of the land. The words used by him were as follows :

"To that end a proclamation be made to the public at the sound of the drum, as, in effect, the public crier, Florentio Baldizan, made, in a high and clear voice, saying: 'The treasury of the department is going to sell, on account of the national treasury and in accordance with the supreme decree of February 10th, 1842, the agricultural lands and lands for raising cattle and horses which comprise the four leagues of the town site of the depopulated town of Tuma-cacori and the two sitios of the depopulated stock farm of the same at the points of Huebabi, Potrero, Cerro de San Cayetano, and Calabazas, situated in the district of San Ignacio, the areas, monuments, boundaries, and coterminous tracts of which are stated in the corresponding proceedings of survey executed in the year 1807 by the commissioned surveyor, Don Manuel de Leon,' etc. (Government's Brief, p. 12.)

Certainly the language used in the patent to De Witt is the exact equivalent of this language, for it describes the land and states that it contains a specific quantity according to a survey which was previously made by the surveyor of this Government, and this Court held that both parties are bound, and that the sale was of the entire tract, and therefore a sale by specific boundaries as contradistinguished from a sale by quantity.

In the case of *Taylor vs. Brown*, 5 Cranch, 251, Mr. Chief Justice Marshall, speaking for this Court, says:

"In conformity with this opinion is that of the judges of Kentucky. Not a case exists, so far as the Court is informed, in which, on a caveat, the quantity of land in the survey of plaintiff or defendant has been considered as affecting the title upon the single principle of surplus. Yet the fact must have often occurred. And in the case of *Beckly vs. Bryan and Ransdale* the contrary principle is expressly laid down. In that cause the Court said:

"*'It is proper to premise that there is but one species of cases in which any court of justice is authorized by our land law to divest the owner of a survey of a surplus included within its*

boundaries, namely, where the survey was made posterior to an entry made by another person on the same land, and to do more would be unequal and unjust, inasmuch as a survey which is too small cannot be enlarged."

I have endeavored to show that all the grants of land in Sonora were executed contracts of sale in which the purchaser bid a lump sum for the land which had been previously surveyed and specifically located by fixed monuments and natural boundaries, and that in no instance did the government of Mexico expressly reserve in the granting paper itself any excess of land which might appear to be within those boundaries, and in no case could the survey be enlarged if the quantity proved too small.

I have further attempted to show that no such thing as a sale of land by quantity within outboundaries was known to the laws of Sonora during the period covered by these grants, and that in California it was the universal practice for the Government, in making floating grants or grants of quantity within outboundaries, to expressly reserve the excess lands, if any existed, by an express stipulation in the granting paper itself.

In the case of *Hardin vs. Jordan*, 140 U. S., 374, this Court quotes approvingly from the case of *Middleton vs. Pritchard*, 3 Ill., 510, as follows:

"Where the Government has not reserved any right or interest which might pass by the grant, nor done any act showing an intention of reservation, such as platting or surveying, we must construe its grant most favorably for the grantee, and that it intended all that might pass by it."

I have attempted to show that the law of *demasias* which was enacted by Mexico in 1861 was in effect only a wholesale judicial reformation of *all mistakes* which had occurred in making specific surveys of grants for the purpose of sales. Had such mistakes been discovered in grants made by this Government, the only remedy would have been a suit in

equity on the part of the Government, in each individual instance or grant, to reform the grant because of a mistake or mistakes in the survey; and in that event the burden would have been upon the Government to show a palpable mistake by clear, unambiguous, and certain evidence, and proof that the mistake been brought to the attention of this Government as early as the year 1839 would have estopped the Government from securing a reformation of the grant by a suit brought as late as the year 1861, upon the ground of laches alone, as is suggested by Mr. Justice Brewer in the case of *U. S. vs. Hancock*, 133 U. S., 193.

The law of the State of Sonora of May 12, 1835, in express terms recognizes the right of a grantee to all the land within his boundaries, and still more strongly emphasizes the fact that the grants were in no instances floating grants, such as were known to the California laws.

In Mexico the courts had no power to entertain a suit to reform or annul a title to lands. That power was reserved to the political arm of the government. Consequently we find that the political arm of the government attempted to make this wholesale reformation of titles, *on account of mistakes in the surveys*, by the law of *demasias*, as it is called, in the year 1861. In so doing the Mexican congress recognized the rights of the grantees to the specific boundaries named in their title papers as being paramount to the rights of either the Government or those of any party or parties seeking to secure the excess of lands within said boundaries over the quantity originally supposed to be contained therein at the time of the survey. The Congress of Mexico endeavored to treat the grantees as a court of equity in this country might do if the Government sued for a reformation of the title. Having been in possession of the lands, the grantee was protected in the improvements which he had placed upon them, and was entitled to retain the whole of said lands, and was only required to pay for the surplus

quantity at the rate which was fixed by law as the minimum price for the sale of such lands *at the date of his original purchase*. Could a court of equity have done more than this in granting a reformation of title in a suit on the part of the Government?

He who asks equity must do equity. Are we to be deprived of our lands on account of the mistakes of the Government surveyor, after nearly half a century of possession by *bona fide* purchasers for value, without receiving in return either the money which was originally paid or the quantity of land we were supposed to have received?

But it is now contended by counsel for this Government that said action on the part of the Mexican congress was equivalent to declaring that these grants were grants by quantity and not by specific boundaries.

It seems clear to my mind that this law of the demasias establishes conclusively exactly the contrary proposition, by showing that *the Mexican government has itself treated these grants as being grants by specific boundaries*, but has attempted to make a wholesale reformation of the titles upon the very ground that the grants contained a greater quantity than they were believed to contain at the time of sale, *by reason of mistakes of the surveyors in surveying the land which was sold*.

What else could Mendoza, the superior chief of the treasury, mean in his letter to the secretary of the treasury of the nation in February, 1839, when he said that excesses of lands were being occupied by grantees, "*said excesses arising from the fact that ancient surveyors, from ignorance or bad faith, to measure two sitios measured four and to measure that number measured eight or more sitios, etc.?*" If the grants were grants by quantity within outboundaries, to what mistakes on the part of the surveyors did Mendoza refer? It could make no difference whether the outboundaries within which a limited quantity was being sold were ten miles or a hundred miles apart. Certainly Mendoza could have had no

other meaning than that the grants were grants by specific quantity, when he stated that the surveyor from ignorance or bad faith in surveying two sitios surveyed four and in surveying four sitios surveyed eight.

See Report Special Agents Flipper and Tipton, pages 83 and 84.

See testimony of witness Bonillas, at pages 178 *et seq.* of my original brief.

Where a grant purports to have been made on actual survey, the non-existence of that survey, though it may increase the difficulty of ascertaining the land granted, does not change the face of the instrument. (*Blake vs. Doherty*, 5th Wheat., 359.)

This tract was sufficiently identified by the testimony of the witnesses found in titulo of 1807 as to east center, south center, and cienega grande monuments, coupled with the other boundary points fixed by Surveyor Leon, and in such a case it is immaterial if a false or mistaken circumstance be added to the description. *Use the words*

Morrow vs. U. S., 95 U. S., 551. "*San Caylena*."

The Court's attention is respectfully invited to two places in the record in No. 297, which are submitted with confidence as showing conclusively that the grants were of designated and located tracts of land. At page 32, bottom, case No. 297, the inspection of the land contains the statement of the subdelegate that "I consider it (the tract of land) may be of some utility for the raising of cattle and horses by putting upon it a well with its corresponding stone cisterns and drinking water, which well can be constructed at the place called La Canoa, where it is reported that water may be obtained at all times by digging in the dry river bed to a short depth."

It thus appears that this place called La Canoa constituted the main value of the tract of land. This was "the spot

which the interested parties had designated as a center, and which was the very place called San Ygnacio de la Canoa." (Rec., p. 33.)

It seems beyond argument that the land sold was with reference to this place as a center. It was located with this place as a central point. To hold that this point of the land was not in contemplation by the parties does not seem at all possible. They would not have bought the land except that such land embraced this place, which constituted the value of the whole. The sale was of the located tract measured and located from this central point.

On page 74, in case No. 297, it appears that after the San Rafael de la Zanja grant was surveyed it was appraised. Experts "under the oath which they made in due form of law, in accordance with the knowledge which they had of the whole of the tract of land, and in accordance with the laws in relation to the matter, placed the value of sixty dollars on each of the three sitios which contained permanent water, and of thirty dollars upon the remaining one, for the reason that it is susceptible of benefit only by means of a well. With this valuation the commandant offered the said four sitios for sale at public auction for thirty consecutive days soliciting bidders."

Here by the very language of the instrument the sale was of designated land, viz., part containing water and one part susceptible of benefit by means of a well. Part of the land was appraised at one price and part at another. It was thus designated and located. This land was sold (p. 75, Rec. No. 297) for \$1,200. To argue that in either the Canoa or San Rafael de la Zanja grant that the parties did not have in mind the specific land containing water would be suggesting that they lacked in common sense.

The same thing is true in the Sonoita grant. The price was fixed (page 121, case No. 27) on the land, because "it has running water and some pieces of land fit for cultivation." The statement was expressly made by the ap-

plicant (page 119) that he did not want the land on the sides of the grant away from the water, "because of the broken up condition of the country and the rocky hills in sight such land would be useless to him." The land which he bid on must have been located in his contemplation and the contemplation of the Mexican officials by the running water and must have been considered to be the land fixed with reference to the central point and the measurements made from it.

What would this grantee have thought if he could have anticipated that in 1898 it would be argued that he bought only an unlocated tract of land which, according to the contention of the United States, may be located as well in the barren hills as along the running water?

Respectfully submitted.

FRANCIS J. HENEY,
Attorney for Appellant.

UNITED STATES OF AMERICA

IMPEACHMENT

No. 119

WILLIAM PAXON, JR., TRUSTEE ET AL. APPELLANTS

THE UNITED STATES, GEORGE W. ATKINSON,
ET AL.

BRIEF ON MOTION TO FILE IMPEACHMENT
EVIDENCE.

FRANCIS J. LINNEY,
Attorney for Appellants

IN THE
Supreme Court of the United States.
OCTOBER TERM, 1897.

No. 119.

WILLIAM FAXON, JR., TRUSTEE, ET AL., APPELLANTS,

vs.

THE UNITED STATES, GEORGE W. ATKINSON,
ET AL.

**BRIEF ON MOTION TO FILE IMPEACHMENT
EVIDENCE.**

The official report on the condition of the archives or records of the titles to land grants in Arizona and similar grants in Mexico, which was made by Will M. Tipton and Henry O. Flipper, as the agents of the Department of Justice, was filed as evidence in this case by counsel for the Government since the trial of this cause in the lower court and without the consent, either verbal or written, of this appellant or his attorney. On page 101 of said report the following recital appears, to wit:

"163. Tumacácori, Calabazas y Huevabi (Arizona).

"There is absolutely no record of this grant of any kind in the archives."

The counsel for appellant had no opportunity to object to the filing of said report or to cross-examine said special agents or either of them upon the same or any part thereof, and the admission of said report in evidence, in so far as any of the recitals contained therein tend to affect the question of the validity of this grant, is hereby objected to upon the ground that such recitals are incompetent, for the reason that they have not been made under oath by said Will M. Tipton and said Henry O. Flipper, and for the further reason that this appellant had no opportunity to cross-examine either said Will M. Tipton or said Henry O. Flipper upon the same.

It seems clear to the writer that if the recital above quoted is to be considered by this court the certified copy of the judgment convicting said Henry O. Flipper of having made false official reports and of having supported them by false statements to his commanding officer, and by exhibiting a fraudulent check to his said commanding officer while acting as a quartermaster in the United States Army, is clearly competent, material, pertinent, and relevant and must likewise be admitted in evidence.

The fact that said recital was made jointly by Will M. Tipton and said Henry O. Flipper can in no way affect the competency and materiality of said evidence, which is offered to impeach the credibility of said Henry O. Flipper, and can only affect the weight which is to be given to it by this court. Said report fails to show which of said special agents is responsible for said recital or made the supposed examination of the archives upon which the same is based.

Counsel for the Government attempts to support said recital by new and additional evidence, which is offered by him in his brief upon this motion, and which he is pleased to call Exhibit A and Exhibit B.

These exhibits are two certificates which were made by Victor Aguilar, the Treasurer General of the State of Sonora, in the Republic of Mexico, on March 12, 1894. These cer-

tificates were in the possession of counsel for the Government for more than one year prior to the trial of this case in the Court of Private Land Claims, and were not offered in evidence upon said trial, and are now offered for the first time. This fact alone is sufficient to exclude them; but they contain no statement which conflicts in the slightest degree with the evidence in this case or which tends in any way to justify said recital by said Will M. Tipton and Henry O. Flipper. Counsel for the Government concedes and admits in his brief on this motion that said recital was based upon these two certificates, and that neither said Will M. Tipton nor said Henry O. Flipper ever had free and unrestrained access to all or even to a considerable part of the records relating to land grants in the archives of Sonora, and hence both were unable to make said recital upon actual personal knowledge, and it is therefore clearly the merest hearsay and is incompetent upon that ground alone, and appellant hereby moves to strike it from the record on that ground, if said report is permitted to remain in evidence. (See pages 5 and 6 of brief on the part of the Government in opposition to the motion of appellant to file additional evidence, and see particularly pages 126, 127, and 128 of my brief in this case.)

In contrast to said two certificates I respectfully call the particular attention of this court to a certificate made by said Victor Aguilar, as Treasurer General of said State of Sonora, on the 24th day of April, 1894, only about one month later, and which appears in the record of this case at page 240, and is as follows, to wit:

"Two fifty-cent stamps duly canceled.

"A seal which reads: 'Republica Mexicana, Tesoreria General del Estado de Sonora.'

"Victor Aguilar, General Treasurer of the State of Sonora,
Republic of Mexico.

"I certify that the photographs of the documents marked from 1 to 4, concerning the expedientes of Tumacacori, Cal.

abasas, Cocospera, and Arivac, are true copies of the original documents which exist in the archives of this general treasury.

"And at the request of Mr. Colin Cameron I herewith issue these presents, in the city of Hermosillo, on the 24th day of April, 1894.

"(Signed)

V. AGUILAR. [RUBRICA.]"

In view of this certificate the language used by Aguilar upon the certificate designated by counsel for the Government as Exhibit A is peculiarly significant, from the fact that it fails to state that there is no record in said archives of the expediente of said grant of 1844, but simply states that there is no record of the sale of said lands; and the language of said Exhibit B is likewise peculiarly significant, from the fact that it also fails to state that there is no record of the expediente of 1807 in said archives, but simply states that said expediente itself is not there. I particularly call the attention of this court to pages 105 and 106 of my brief and to page 137 of said brief. Upon said last page I call attention to the fact that the documents referred to in said certificate by Aguilar, which is found at page 240 of the Record, were not discovered or found by the keeper of the archives until after the Court of Private Land Claims had met for its March term, 1894, and I had secured a continuance of the case, for the reason that the total absence of any record evidence of said grant had just been called to my attention. I now notice that I was in error in stating that this evidence was discovered just before the court met for its March term in 1895, and recall the fact that I sent Mr. Velasco to Hermosillo to make his examination of the archives during the time the Court of Private Land Claims was in session for its March term, 1894, and the discovery was made by Mr. Rochin, the keeper of the archives, upon April 24, 1894, the date mentioned in said certificate.

Counsel for the Government is not accurate in stating that I sought a stipulation to introduce in evidence a supple-

mental report upon said archives by Messrs. Tipton and Flipper, which appears in the record as "Evidence Introduced by Stipulation." The fact is that I wrote Mr. Reynolds to stipulate with me as to the character and general make-up of the two books of *Toma de Razon* which are found in the archives of Sonora, and in reply Mr. Reynolds sent me a copy of said supplemental report of Messrs. Tipton and Flipper and stated that he would stipulate as to the truth of the facts stated therein, but not as to any other fact mentioned in my letter. After a careful examination of said supplemental report I accepted this offer on the part of Mr. Reynolds and did highly commend the accuracy of said supplemental report. I do the same now, but I emphatically repudiate the idea that I thereby make Mr. Flipper my witness or endorse his credibility as a witness generally. He is a defendant in this case, as well as being an agent for the Government, and naturally I do not hesitate to accept and make use of any admission which may be made by him in our favor; but I fail to see how this in any way binds me to accept all of the statements made by him or Mr. Tipton in their official report, any more than I am bound to accept and adopt as my evidence the testimony given by Mr. Flipper in his direct examination upon the trial of this case, because I urge that his testimony upon cross-examination fully supports the evidence of my own witnesses upon every material point.

"A sense of justice" would seem to have demanded that this supplemental report should have been published with the original report, even if it does count against the Government by reflecting on the integrity of the *Toma de Razon* books, which are found in the archives of Sonora.

The data contained therein was secured by Messrs. Tipton and Flipper at the same time as the other data contained in said original report, and there would seem to be no good reason for its omission from that report in the first instance in view of the fact that it bears strongly upon a very vital

and material question which is before this court in several of the grant cases, to wit, the question of what is intended by the words "duly recorded" which occur in the sixth article of the Gadsden Treaty. (See my brief, page 108 *et seq.*)

The other points made by Mr. Reynolds in his brief on this motion are entirely personal, and for that reason my respect for this court constrains me to refrain from answering them.

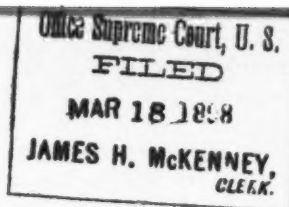
As an example of an utter want of scrupulous care on the part of Mr. Flipper in translating any part of a document where a corrected translation might count against the Government, I respectfully invite the attention of this court to pages 214, 215, and 216 of my brief, where it appears that Mr. Reynolds was led into an egregious blunder by the failure of Mr. Flipper to call his attention to an error in translation which appears in the record, where a correction would have counted strongly against the Government.

In conclusion, I submit that a party who is himself a squatter on a grant and who has been living for twelve years among such squatters, aiding them by his undoubted talents in their efforts to defeat all grants which conflict with their personal interests, whether honest and valid or not, is hardly a proper person to be selected to perform impartial services as a special agent for the Government, whose *ex parte* reports should be received without question and with unqualified credence.

Respectfully submitted.

FRANCIS J. HENY,
Attorney for Appellant.

No. 119.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 119.

WILLIAM FAXON, JR., TRUSTEE, ET AL., APPELLANTS,

vs.

THE UNITED STATES, GEORGE W. ATKINSON,
ET AL.

**Motion for Leave to File Finding of Court-Martial in
the Case of Henry O. Flipper.**

Now comes the appellant in the above-entitled cause, by Francis J. Heney, Esq., his attorney, and moves this honorable court for permission to file a certified copy of a judgment of court-martial finding Henry O. Flipper guilty of making false official reports as a second lieutenant and acting quartermaster in the United States Army, and of presenting a fraudulent check to his commanding officer as cash officially held by him when an official inspection of his cash on hand was being made.

The purpose of this offer is to impeach the credibility of said Henry O. Flipper as a witness, for the reason, among

others, that a certain report on the condition of the archives of Mexico was made by him since the trial of this case, and has been filed on the part of the Government as evidence in this case without the consent, either oral or written, of this appellant or his counsel, and this appellant has had no opportunity, through counsel or otherwise, to cross-examine said Henry O. Flipper upon any of the facts recited in said report, and especially upon one recital, contained therein at page 101 thereof, to the effect that no evidence of any kind appears in said archives of Mexico in relation to the grant which is the subject-matter of this suit, and for the reason that it is contended by this appellant that said recital in said report by said Henry O. Flipper is not true.

FRANCIS J. HENNEY,
Attorney for the Appellant.

No. 119.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 119.

WILLIAM FAXON, JR., TRUSTEE, ET AL.,
APPELLANTS,

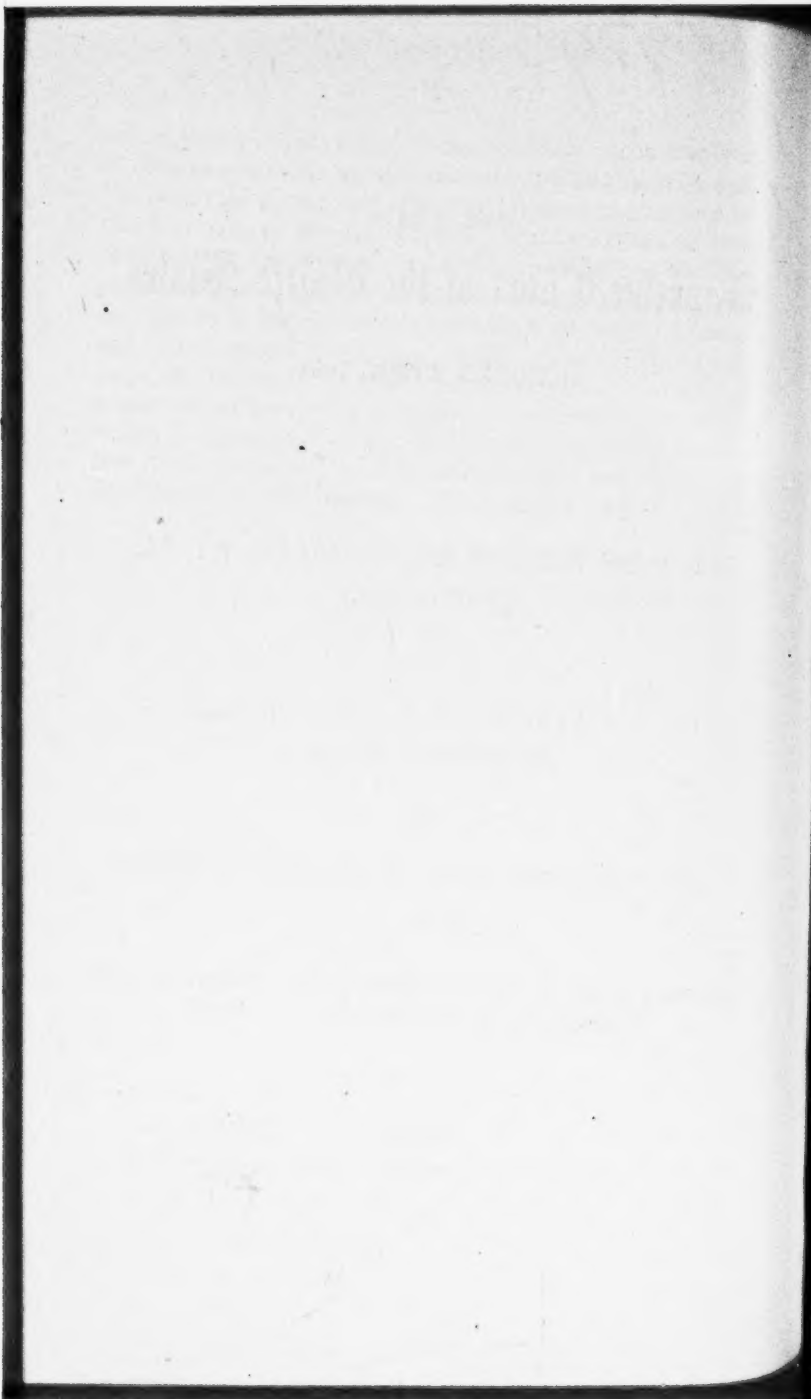
vs.

THE UNITED STATES AND GEORGE W.
ATKINSON ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Certified Copy of Court-Martial Order Dismissing 2nd
Lieut. Henry O. Flipper from U. S. Army.

FRANCIS J. HENEY,
Attorney for Appellant William Faxon, Jr., Trustee.



GENERAL COURT-MARTIAL }
ORDERS, No. 39. }

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
Washington, June 17, 1882.

I. Before a general court-martial which convened at Fort Davis, Texas, November 4, 1881, pursuant to Special Orders, No. 108, dated September 3; No. 131, dated October 18; and No. 133, dated October 22, 1881, from Headquarters Department of Texas, San Antonio, Texas, and of which Colonel GALUSHA PENNYPACKER, 16th Infantry, is president, was arraigned and tried—

2d Lieutenant *Henry O. Flipper*, 10th Cavalry.

CHARGE I.—“Embezzlement, in violation of the 60th Article of War.”

Specification—“In this: that 2d Lieutenant *H. O. Flipper*, 10th Cavalry, did embezzle, knowingly and willfully misappropriate and misapply, public money of the United States, furnished and intended for the military service thereof, to wit: three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), more or less, which money came into his possession and was intrusted to him in the capacity of acting commissary of subsistence at the post of Fort Davis, Texas. This at Fort Davis, Texas, between the 8th day of July, 1881, and the 13th day of August, 1881.”

CHARGE II.—“Conduct unbecoming an officer and a gentleman.”

Specification 1st—“In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, having been directed, at or near Fort Davis, Texas, on or about the 8th day of July, 1881, by his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding the post of Fort Davis, Texas, to transmit certain funds, for which he, Lieutenant *Flipper*, was accountable as acting commissary of subsistence, to the chief commissary of subsistence of the Department of Texas, and on being asked at or near Fort Davis, Texas, on or about August 10th, 1881, by Colonel Shafter, if he had transmitted the said funds, part of which were in checks, did then, in substance and tenor, assure him, Colonel Shafter, that he had transmitted said funds; that he had endorsed the checks making them payable to the order of said chief commissary

of subsistence of the department, and sent the amount by mail; that he had taken the letter to the post-office himself, he, Lieutenant *Flipper*, well knowing the same to be false, in that the said funds had not been so transmitted and the checks had not been so endorsed."

Specification 2d—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, July 9th, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 9th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to chief C. S., San Antonio, Texas, since July 9th, 1881.....	3,791 77
In my personal possession, in office safe.....	150 17
Total amount.....	\$3,941 94

Very respectfully, your obedient servant,
(Signed) HENRY O. FLIPPER,
2d Lieut. 10th Regt. of Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false, and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 9th day of July, 1881."

Specification 3d—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, July 16th, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 16th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to chief com's'y subs. Dep't Texas.....	3,791 77
In my personal possession, in office safe.....	289 34
 Total amount.....	 \$4,081 11

Very respectfully, your obedient servant,
(Signed) HENRY O. FLIPPER,
2d Lieut., 10th Regt. of Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 16th day of July, 1881."

Specification 4th—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, July 23d, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 23d, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to ch'f C. S. Dep't Texas, San Antonio, Texas	3,791 77
In my personal possession, in office safe.....	479 30
 Total amount.....	 \$4,271 07

Very respectfully, your obedient servant,
(Signed) HENRY O. FLIPPER,
2d Lieut., 10th Regt. Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 23d day of July, 1881."

Specification 5th—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being acting commissary of subsistence at the post of Fort Davis, Texas, and in such capacity being required to make a weekly exhibit of the funds in his possession pertaining to the Government to his post commander, did exhibit to his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding post of Fort Davis, Texas, as part of the aforesaid funds, a check in words and figures as follows:

Designated
Depository of the
United States.

No. 9.

SAN ANTONIO, TEXAS, May 20, 1881.

San Antonio National Bank

Pay to Lieut. *Henry O. Flipper*, A. C. S., or order, fourteen hundred and forty and $\frac{43}{100}$ dollars.

\$1,440.43.

HENRY O. FLIPPER,

2d Lieut., 10 Cav'y.

which check was fraudulent and intended to deceive the said commanding officer, as he, Lieutenant *Flipper*, neither had nor never had had personal funds in said bank, and had no authority to draw said check. This at Fort Davis, Texas, on or about the 2d day of July, 1881."

To which charges and specifications the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, pleaded "Not guilty."

FINDING.

The court, having maturely considered the evidence adduced, finds the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, as follows:

CHARGE I.

Of the *Specification*,

Of the CHARGE,

"Not guilty."

"Not guilty."

CHARGE II.

Of the *1st Specification*, "Guilty."
 Of the *2d Specification*, "Guilty."
 Of the *3d Specification*, "Guilty."
 Of the *4th Specification*, "Guilty."
 Of the *5th Specification*, "Guilty."
 Of the CHARGE, "Guilty."

SENTENCE.

And the court does therefore sentence him, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, "*To be dismissed from the service of the United States.*"

II. The proceedings, findings, and sentence of the general court-martial in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, having been approved by the proper reviewing authority and the record forwarded, in accordance with the provisions of the 106th Article of War, for the action of the President, the following are his orders:

EXECUTIVE MANSION, June 14, 1882.

The sentence in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Regiment of U. S. Cavalry, is hereby confirmed.

CHESTER A. ARTHUR.

III. By direction of the Secretary of War the sentence in the case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, will take effect June 30, 1882, from which date he will cease to be an officer of the Army.

BY COMMAND OF GENERAL SHERMAN:

R. C. DRUM,
Adjutant General.

OFFICIAL:

Assistant Adjutant General.

UNITED STATES OF AMERICA.

WAR DEPARTMENT,
WASHINGTON CITY, *March 15, 1898.*

I hereby certify that the five pages hereto attached are a true copy of General Court-Martial Orders, No. 39, Headquarters of the Army, Adjutant General's Office, Washington, June 17, 1882, on file in the Adjutant General's Office, War Department.

H. C. CORBIN,
Adjutant General.

Be it known that H. C. Corbin, who signed the foregoing certificate, is the Adjutant General of the Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto
set my hand and caused the seal of the
Seal War Office, United States of War Department to be affixed on this
America. fifteen day of March, one thousand
eight hundred and ninety-eight.

G. D. MEIKLEJOHN,
Assistant Secretary of War.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM FAXON, JR., TRUSTEE, ET AL., appellants, v. THE UNITED STATES AND GEORGE W. Atkinson et al.	}	No. 119.
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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

TUMACÁCORI, CALABAZAS, AND HUEBABI GRANT IN ARIZONA.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT AND BRIEF.

Suit was instituted in the Court of Private Land Claims for the confirmation of what is commonly called and known as the Tumacácori, Calabazas, and Huebabi grant or private land claim, situate in the valley of the Santa

Cruz River, Pima County, Ariz. There were three separate petitions filed for the confirmation of this claim, the petitioners in each claiming under the original grantee. Upon the motion of the United States the causes were consolidated and tried under the petition filed on March 2, 1893, by *William Faxon, jr., trustee, et al. v. The United States et al.*, the co-defendants of the United States being persons, it is alleged, who claimed some interest in the property adversely to the plaintiffs.

In this petition (R., 1-6) it was alleged that the claimants were the owners in fee and holders and possessors of a certain tract of land known as the Tumacácori, Calabazas, and Huebabi grant or private land claim in the Territory of Arizona; that such lands were so held under and by virtue of a certain instrument in writing, designated as a grant title, dated April 19, 1844, made and executed by the treasury department of Sonora in compliance with the law of the Mexican Congress of February 10, 1842, which, it was alleged, provided for the denouncement and sale of abandoned *pueblos*, and that under and by virtue of such law, and in compliance and furtherance of certain other laws and proceedings, the treasury department of Sonora, by its duly authorized officers, for a good and valuable consideration, to wit, the sum of five hundred dollars in lawful money of said department of Sonora and of the Mexican republic, and for other good and valuable considerations set forth in said grant title, did on April 18, 1844, sell and convey in fee to Don Francisco Alexandro Aguilar, the grantee therein, the lands mentioned.

It was further alleged that the laws under and by virtue of which said grant was made and the proceedings preceeding the issuance of said grant were as follows, that is to say :

1. That in the year 1806 Juan Legarra, governor of the Indian *pueblo* of Tumacácori, situated in the jurisdiction of Pimaria Alta, petitioned Don Alejo Garcia Conde, intendant of the province and of the royal treasury, political and military governor, and *juez privativo* (special judge), to issue to the Indians of the *pueblo* of Tumacácori a grant of lands for the *fundo legal* of the *pueblo* and also for the *estancia* (stock farm) of the *pueblo*, the grant asked for to replace the ancient title papers which had been given by the Spanish Government to the Indians of said *pueblo* and which had been lost or destroyed, and it was alleged that this petition was made to the intendant in accordance with the royal instructions of October 15, 1754, and article 81 of the royal ordinances and instructions in relation to the intendants of December 4, 1786.

2. That in accordance with said petition the lands petitioned for were ordered by the intendant to be surveyed by the proper officer, and on January 14, 1807, the said lands were surveyed and the boundary monuments established by Don Manuel de Leon, commandant of the *presidio* of Tubac.

3. That on April 2, 1807, the said Don Alejo Garcia Conde issued a royal patent or title, under the laws referred to, to the Indians of the *pueblo* of Tumacácori for the lands, as set forth in the proceedings in relation to the survey thereof, set out at length in the copy of the

original *expediente*, and which original title was duly registered in Book No. 174, existing in the *Juzgado Privativo*.

4. That under the law of the Mexican Congress of the 10th of February, 1842, providing for the denouncement and sale of abandoned *pueblos*, Don Francisco Aguilar, on April 18, 1844, became the owner, by purchase, for the sum of \$500, of the four square leagues of agricultural and grazing lands of the *fundo legal* of the abandoned *pueblo* of Tumacácori and the *sitios* of the *estancia* (stock farm) of Calabazas and the other places thereunder pertaining, the areas, boundaries, monuments, and *colindantes* of which are set forth in the corresponding proceedings of measurement made in the year 1807 by the commissioner and surveyor, Don Manuel de Leon; that the original proceedings of denouncement and sale to the said Aguilar are set out at length in the original *expediente* referred to, a registry of the sale and denouncement being made in the corresponding book.

To the petition is attached a sketch map (R., 6) of the grant.

It was further alleged that the original title by which said grant was conveyed to the aforesaid grantee was not in the possession or under the control of the petitioners, but together with other records and papers relating to the grant was in the possession and custody of the United States surveyor-general of the Territory of Arizona, and by reason thereof the claimants were unable to file the same or a copy thereof with their petition.

It was also alleged that, under the provisions of the eighth section of an act of Congress approved July 22,

1854, and other acts amendatory or in extension thereof, the claim was filed before the surveyor-general of Arizona on December 22, 1879, by John Curry and C. P. Sykes, who claimed to own the same by mesne conveyances from the original grantee; that said surveyor-general caused the grant to be investigated, and under date of January 7, 1880, reported the same to Congress, recommending the confirmation thereof. It was also alleged that no further action was ever taken upon the same by Congress or any other authorities of the United States.

It was also alleged that the petitioners held and possessed the said grant under divers mesne conveyances from the original grantee of said grant and his grantees; that the original grantees of said grant were Mexicans and citizens of the republic of Mexico, and at the time of the Gadsden treaty the owners of said grant were likewise Mexicans and citizens of the republic of Mexico; that the said grant is, and at the time of the execution of said treaty was, duly recorded in the archives of Mexico.

It was further alleged that all of the steps and proceedings in the matter of the grant and sale of said lands were regular, complete, and lawful, and vested a perfect and valid title in fee thereto in said grantee, and that said grantee at the time went into the actual possession, use, and occupation of said grant, and erected the proper monuments thereon, and that said grantee and his descendants and legal representatives have continued ever since and until the present time in the actual possession, use, and occupation of the same, and are now seized and

possessed in fee thereof. It is also alleged that said grant documents constituted a complete and definitive grant in fee by way of sale, coupled with the condition subsequent not to abandon the same for a longer period than three years without good reason, which would subject said tract to adjudication to third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed, and the petitioners were entitled to a confirmation of said grant with the metes and bounds set forth in the original survey and grant.

It was further alleged that the lands claimed by the petitioners were all the lands embraced within the original survey of said grant to the boundaries established and described therein, and that said lands were the lands embraced within the map filed by petitioners with their petition as Exhibit A.

On behalf of the United States, an answer (R., 20-22) was filed in the consolidated cases, in which it was denied that the plaintiffs, or any of them, were the owners in fee, holders, and possessors of the tract claimed, or that they held and possessed it under and by virtue of the instrument in writing designated in their petition as grant title. It was averred that as to whether or not the treasury department of Sonora, through any of its officers, or for the consideration set forth in the petition, or in consideration of any other sum, on April 18, 1844, sold and conveyed to one Don Francisco Alexandro Aguilar said lands or private land claim, the defendant had no information, but, on the contrary, it averred that if it did so, it was without warrant or authority of law and void.

It further averred want of knowledge or information as to whether or not said lands had theretofore been granted to the Indian *pueblo* of Tumacácori, as set forth in said petition, but avers that, if the same be true, said lands were abandoned about the year 1820, and by virtue thereof became public lands. It averred that the title to said property, if any, that was passed, was purely usufructuary and vested no estate, legal or equitable, in the said alleged *pueblo* or mission, but the same and the right of disposition thereof were reserved to the national government.

Further answering, it denied that under the law of February 10, 1842, said Aguilar, on April 18, 1844, became the owner by purchase or otherwise of any lands included in the alleged grant of 1807 to the *pueblo* of Tumacácori or any land granted to the said *pueblo* of Tumacácori.

It denied the correctness of the map or tracing of said alleged grant according to the alleged grant to the Indian *pueblo* of Tumacácori of 1807, or the mission thereof, and that the statements, either of law or fact, contained in the report of the surveyor-general of Arizona, dated January 7, 1880, made under the provisions of an act approved July 22, 1854, and acts amendatory thereto, were true.

It also denied that the grant set forth in the petition was located and recorded as provided by the sixth article of the treaty of Mesilla (Gadsden purchase) executed December 30, 1853, and ratified June 30, 1854.

It denied that the plaintiffs owned, held, or possessed said grant under divers sundry mesne conveyances made

by the original grantee and his grantees, and averred that if they asserted such a claim to the same, it was without merit and null and void, because the original grantee never had any title, either legal or equitable, thereto.

As to whether or not said original grantee or any of his transferees were Mexican citizens, it averred it had no knowledge or information, but denied that they or any of them were ever owners of said property as against the republic of Mexico or are now the owners thereof as against the United States or its grantees; and it also denied the regularity, completeness, and lawfulness of the steps and proceedings in the matter of the alleged grant and sale of said lands as set forth in the petition, or that, if taken as alleged, they vested a perfect and valid title in fee or in equity thereto in said grantee.

It further denied that the said grantee at said time, to wit, in the year 1844, went into actual possession, use, and occupation of said grant and erected monuments thereon, for the reason that at the time of said alleged grant, in the year 1844, no description of said property was known or set forth by which proper monuments could be erected, or that the said grantee and his said legal representatives have continued ever since and until the time of the filing of said petition in the actual possession, use, and occupation of the same, or that they were at said time seized and possessed in fee or in equity thereof.

It denied that the said alleged grant documents constituted a complete and definite grant in fee or in equity, by way of sale, coupled with the condition subsequent

not to abandon the same for a longer period than three years without good reason, which would subject the tract to the adjudication of third parties who might apply for or denounce the same; that no forfeiture of said grant was ever claimed; but, on the contrary, it averred that said alleged proceedings, as set forth in said petition, were never taken under the express order or approval of the general government, and were never submitted to said general government for ratification or approval, and therefore were declared null and void under and by virtue of the decree of November 25, 1853, and said transfer to the United States under the treaty of Mesilla was a resumption of sovereignty over the same and forfeiture thereof, and it averred that the United States took the same free and clear of any incumbrance, claim, or right by virtue of said proceedings, as set forth in said proceedings, denying the right of the plaintiffs to confirmation as prayed for in said petition.

Further answering, it said that the lands claimed by plaintiffs, if said alleged proceedings were regular, valid, and in due form, were a great deal more than contained in said original survey, and it alleged that said alleged grant or patent was a sale, if at all, by quantity and limited to six *sitios* and no more, and that the same was the only quantity of land paid for by the alleged grantee, if any payment at all were in fact made.

It was averred that no official or officials of any department of the republic had authority to issue final titles of sale to the public lands until after the same had been submitted to the treasury of the national government

and approved by it and authority given therefor, and that this grant was without warrant or authority of law because the proceedings were not submitted to the national government for approval before the final issue of the patent, as provided by law, and that said alleged proceedings were otherwise improper and void and conformed to no law of the republic of Mexico, and that said grant is so indefinite and uncertain as to description as to carry no title to any land. (R., 20-22.)

A copy in Spanish of the *titulo* of the grant of 1807 is found in the record (pp. 242-259).¹

A copy in Spanish of the *titulo* of the grant of 1844 is found in the record (pp. 260-264).

It appears that Ignacio Lopez, claiming to be the treasurer of the department of Sonora, undertook in April, 1844, to sell the lands of the abandoned town (*pueblo*) of Tumacácori, which had been set apart to said town in the year 1807 by order of Intendant Conde, claiming the same to belong to that class of lands known as temporalities (*temporalidades*). The law recited as authority for his action was the decree of Santa Anna of February, 1842. (See *Reynolds S. & M. L. L.*, 239.) Appellants' translation of the alleged *titulo* of 1844 is found in the record (pp. 280-284), but the Government deems it proper to submit its own translation, which is as follows:

Second Seal.	Seal.	Four Dollars.
Eighteen hundred and fortyfour and eighteen hundred and fortyfive.		

Ignacio Lopez, Captain of Cavalry retired to the Infantry, Honorary Intendant of the Army and Treasurer of the Department of Sonora.

Whereas the supreme decree of February 10th, 1842, provides for the sale, on account of the critical condition of the public treasury, of the properties pertaining to the department of temporalities, of which class are the farming lands and the lands for breeding cattle and horses respectively of the four leagues of the townsite of the depopulated town of Tumacácori and the two *sitios* of the stockfarm of the same at the points of Huebabi, Potrero, Cerro de San Cayetano and Calabazas, whose areas, boundaries, monuments and coterminous tracts are stated in the corresponding proceedings of survey executed in the year 1807 by the commissioned surveyor, Don Manuel de Leon, veteran Ensign and late Commandant of the *presidio* of Tubac, according to the information obtained in relation thereto at the instance of this departmental Treasury, said temporal farming and grazing lands being valued in the sum of five hundred dollars, as provided in article 2d of the aforesaid supreme decree of February 10th, 1842; and complying punctually therewith I have ordered the formation of the corresponding *Expediente* by the Court of First Instance and of the Treasury of the District of San Ignacio, during which proclamations (*pregones*) no bidder appeared; therefore, and in compliance with article 73 of the law of April 17th, 1837, as the sale in question on account of the national Treasury does not exceed five hundred dollars, this said Treasury proceeded to the public sale of the aforementioned lands of the depopulated Tumacácori and the lands of its stockfarm, Calabazas, and other annexed points, all belonging to the department of temporalities, on the 16th, 17th and 18th of the current month of April, in solicitation of bidders, without there being any other than Don Francisco Alexandro Aguilar, a merchant and

resident of this port and village of San Fernando de Guaymas, for said sum of five hundred dollars, the appraised value at which said temporalities have been sold, as appears from the third and last offer, which literally is as follows : * * *

In the port and village of San Fernando de Guaymas, on the eighteenth of April eighteen hundred and forty four, I, the undersigned departmental Treasurer, being in the office of this Treasury under my charge, with my attendant witnesses, Don José Maria Mendoza and Don Vicente Irigoyen, in the absence of a Notary of the Treasury and of a Notary Public, in compliance with the provisions of article 73 of the law of April 17th 1837, since the price or value of the temporalities to which these proceedings relate do not exceed five hundred dollars, ordered that the third and last offer be made for the final sale of the temporal lands of Tumacácori and Calabazas referred to in this *Expediente* and that to that end a proclamation be made to the public at the sound of the drum, as, in effect, the public crier, Florentino Baldizan, made, in a high and clear voice, saying: "The Treasury of the Department is going to sell, on account of the national Treasury and in accordance with the supreme decree of February 10th 1842, the agricultural lands and lands for raising cattle and horses which comprise the four leagues of the townsite of the depopulated town of Tumacácori and the two *sitios* of the depopulated stock-farm of the same at the points of Huebabi, Potrero, Cerro de San Cayetano and Calabazas, situated in the District of San Ignacio, the areas, monuments, boundaries and coterminous tracts of which are stated in the corresponding proceedings of survey executed in the year 1807 by the commissioned surveyor, Don Manuel de Leon, veteran Ensign and late Commandant of the *presidio* of Tubac, as ap-

pears from the information obtained at the instance of said departmental Treasury, from which it also appears that the original titles of grant and confirmation of said temporalities still exist, which temporalities have now been valued at five hundred dollars in accordance with article 2d of said supreme decree of February 10th, 1842. Whoever desires to make a bid, come forward and make it to this departmental Treasury where it will be received in conformity with the laws, with the understanding that the final sale is to be made now to whomever should be the highest bidder." In which act Don Francisco Alexandro Aguilar, a merchant and resident of this port, appeared and made the bid of five hundred dollars at which said temporalities are appraised, and no other bidder having appeared and the hour for midday prayer of this day having already struck, the public crier finally said: "Once, twice, three times; sold, sold, sold; may it do good, good, good to Don Francisco Alexandro Aguilar."

In these terms this act was concluded, the aforesaid farming lands and lands for raising cattle and horses of the depopulated townsite and stockfarm of the temporalities of Tumacácori and Calabazas being publicly and solemnly sold to Don Francisco Alexandro Aguilar, a merchant and resident of this port, for the sum of five hundred dollars.

And in due witness thereof and for the usual purposes these proceedings were closed and entered and I signed them together with the party in interest and my undersigned attendant witnesses.

IGNACIO LOPEZ.

Witness:

JOSÉ MARIA MENDOZA.

FRANCISCO A. AGUILAR.

Witness:

VICENTE IRIGOYEN.

In which legal terms was concluded the sale of the farming lands and lands for raising cattle and horses which comprise the four leagues of the depopulated townsite of Tumacácori and the two *sitios* of its stockfarm, Calabazas, and other annexed points, all temporalities, situated in the jurisdiction of the District of San Ignacio, the original *Expediente* remaining deposited in the archives of this Treasury as perpetual evidence, *with the understanding that when the original titles of Tumacácori and Calabazas are obtained, they shall be aggregated to the present one.*

Whereas the agricultural lands and lands for raising cattle and horses, which comprise the four leagues of the depopulated town of Tumacacori and the two *sitios* of its stockfarm of Calabazas and other annexed points, all temporalities, in the jurisdiction of the District of San Ignacio, have been publicly and solemnly sold to Don Francisco Alexandro Aguilar, a resident and merchant of this port, for the sum of five hundred dollars, which sum together with the others pertaining to the Treasury, he has paid into this departmental Treasury, I, therefore, in use of the powers the laws on the matter, as also the supreme decree of the 10th of February 1842, concede to me, by the present title and in the name of the Mexican Nation and of the Supreme Government formally cede, sell, give and adjudicate the said farming lands and lands for raising cattle and horses, which comprise the four leagues of the depopulated townsite of Tumacácori and the two *sitios* of its stockfarm of Calabazas and other annexed points already mentioned to the said buyer, Don Francisco Alexandro Aguilar, by way of sale, and with all the qualities, solemnities, firmness and subsistence the law establishes, for himself, his heirs,

children and successors, with all their entrances, exits, lands, timber, groves, shrubs, pastures, centers, circumferences, waters, springs, watering places, uses, customs, servitudes and other things pertaining to said possessions, with their enclosures, metes and bounds for the sum of five hundred dollars, at which they have been sold to said Francisco Alexandro Aguilar, with the precise condition that the said buyer, and his successors in their case, are to maintain the above mentioned agricultural lands and lands for raising cattle and horses that comprise the four leagues of the depopulated townsite of Tumacácori and the two *sition* of its stockfarm of Calabazas populated, possessed, cultivated and protected, without passing beyond their metes and bounds and without their being totally abandoned; with the understanding that if the said abandonment and depopulation of said farming and grazing lands should take place for the space of three consecutive years, by the neglect or fault of their owners or possessors and there should be any person who denounces them, in such event after verification of the fact, they shall be declared public lands and shall be sold at public sale, on account of the national Treasury, to whomever should be the highest bidder, excepting, as is just, those cases where the abandonment, depopulation or lack of protection are on account of the notorious invasion or hostility of enemies or epidemics or other like causes, and only for the period or periods of such occurrences, cautioning as the aforesaid Don Francisco Alexandro Aguilar and his successors are strictly cautioned that they are to restrict themselves to the belongings, metes and bounds of the aforesaid agricultural and grazing lands of the townsite of Tumacácori and its stock-

farm of Calabazas, constructing and maintaining on said possessions the necessary monuments of stone and mortar under the penalties established by the laws in case of neglect.

And with the powers, which they and the divers superior provisions that govern in the matter, concede and confer on me, I order and require respectively of the Judges, Justices and local authorities that at present are and shall hereafter be in the District of San Ignacio, that, for the sake of the good and prompt administration of justice and in observance of the aforesaid legal provisions they do not permit the said Francisco Alexandro Aguilar nor his successors to be, in any manner, disturbed, annoyed or molested in the free use, exercise, property, dominion and possession of the said agricultural lands and lands for raising cattle and horses of the townsite of Tumacácori and stockfarm of Calabazas, but rather shall watch and see with the greatest efficacy that they are always protected and maintained in the quiet and peaceable possession to which they are entitled by legitimate right, so that, in this manner, they may freely have the benefit of, enjoy, possess, sell, exchange, barter, donate, transfer, devise, cede and alienate the aforesaid agricultural lands and lands for raising cattle and horses of the four leagues of the townsite of Tumacácori and its stockfarm, Calabazas, and other annexed points, at their free arbitrament and election, as absolute owners and proprietors of said possessions, with the understanding also that just as soon as the original titles of said agricultural and grazing lands are obtained they shall be aggregated to the present ones, and the transmittal and delivery of said original documents are considered as made and verified from this moment in favor of said party in interest, Don Francisco Alexandro Aguilar.

In which terms I have issued this title of formal sale, transfer and adjudication to said Mr. Aguilar, his heirs and successors, delivering it to the former for his security and other convenient uses, *after entry thereof in the proper place.*

Given in the Port and village of San Fernando de Guaymas, on the nineteenth day of the month of April eighteen hundred and forty four, authenticated and signed by me, the Treasurer of the Department, sealed with the seal which this Treasury uses, before my undersigned attendant witnesses, in the absence of a Notary of the Treasury or a Notary Public, there being none, according to law.

IGNACIO LOPEZ.

Witness :

JOSÉ DIEGO LABANDERA.

Witness :

JOSÉ MARIA MENDOZA.

The form of this document is unusual. The instrument commences with the usual preamble, in which the authority for the action taken and the extent to which it was attempted to be exercised were recited. It is stated that the decree of February 10, 1842, provided for the sale, on account of the critical condition of the public treasury, of the properties pertaining to the department of temporalities, and that the farming lands and the lands for the breeding of cattle and horses respectively of the four leagues of the depopulated town of Tumacácori and the two *sitios* of the stock farm of the same, at the points of Huebabi, Portrero, Cerro of San Cayetano and Calabazas, the areas of which, the boundaries, monuments, and coterminous tracts were stated in the proceedings of survey executed in the year 1807 by the commissioned

surveyor, Don Manuel Leon. It was also stated that in accordance with article two of the decree of February 10, 1842, the department of the treasury had obtained information that said temporal, farming and grazing lands were valued at the sum of \$500, and complying punctually therewith he ordered the formation of an *expediente* by the court of first instance of the district of San Ignacio and by the treasury, and during the proclamations (*pregones*) no bidders appeared. It is further stated that as the sale in question was on account of the national treasury and did not exceed \$500, therefore, in compliance with article 73 of the law of April 17, 1837 (*Reynolds*, 225), the treasury proceeded to the public sale of the aforementioned lands of the depopulated town of Tumacácori and the lands of its stock farm, Calabazas, and other annexed points, all of which belonged to the department of temporalities; that said sale was held on the 16th, 17th, and 18th of said month of April, and that there were no bidders other than Don Francisco Alexandro Aguilar, a merchant and resident of the village and port of San Fernando de Guaymas, to whom for the said sum of five hundred dollars, at which said temporalities had been appraised, the same was sold as appeared from the third and last offer (*almoneda*). Then follows what is alleged to be a literal copy of the third and last *almoneda*. It will be noticed that this *almoneda* is not made by the board of sales, but by the departmental treasurer, Ignacio Lopez, with his attending witnesses, Don José Maria Mendoza and Don Vicente Irigoyen, clearly in violation of the very laws to which he refers for authority.

Continuing, after setting forth the *almoneda*, the preamble states: "In which legal terms was concluded the sale of the farming lands and lands for raising cattle and horses which comprise the four leagues of the depopulated town site of Tumacácori and the two *sitios* of its stock farm, Calabazas, and other annexed points, all temporalities, situated in the jurisdiction of the district of San Ignacio, the original *expediente* remaining deposited in the archives of this treasury as perpetual evidence, with the understanding that WHEN THE ORIGINAL TITLES OF TUMACÁCORI AND CALABAZAS ARE OBTAINED, THEY SHALL BE AGGREGATED TO THE PRESENT ONE.

By these recitals it will be seen that the officer making this sale did not have either the *expediente* or the *título* of the Tumacácori grant of 1807, and it does not appear that he had any information as to where they were, consequently he did not know what the boundaries were, and the only information he seems to have had was generally as to the area of the town site and the *estancia*.

It is apparent also that at that time there was nothing in the archives by way of record of the grant of 1807 from which any definite information could be obtained by Lopez as to this alleged original grant to the *pueblo* of Tumacácori.

It is further recited that the agricultural lands and lands for raising cattle and horses which comprised the four leagues of the depopulated *pueblo* of Tumacácori and the two *sitios* of its stock farm, Calabazas, and other annexed points, all temporalities, were publicly and solemnly sold to Francisco Alexandro Aguilar for the sum

of five hundred dollars, which sum, together with the others pertaining to the treasury, he paid at that time into the departmental treasury. It does not appear what the other payments pertaining to the treasury were, nor their amounts, but it may be inferred that they were the fees of the officers.

Based upon the foregoing preamble and its recitals, Lopez proceeded to formally pass the title of the four leagues constituting the town site of the depopulated town of Tumacácori and the two *sitios* of its stock farm Calabazas, and he recited that he did so under the authority conferred by the decree of February 10, 1842, to Don Francisco Alexandro Aguilar by way of sale, and *upon the condition that the buyer and his successors were to maintain the above-mentioned lands populated, possessed, cultivated, and protected, without passing beyond their metes and bounds and without their being totally abandoned, with the further understanding that if the same were to be abandoned and depopulated for a space of three consecutive years by reason of the neglect or fault of the owners and possessors, and there should be any other person to denounce them, upon verification of the facts, they should be declared public lands and sold at public sale, on account of the national treasury, to the highest bidder, excepting in those cases where the abandonment, depopulation, or lack of protection was on account of the notorious invasion or hostility of enemies, or epidemics, or other like causes, and only for the period or periods of such occurrences.* Aguilar, the grantee, and his successors were cautioned to restrict themselves to the belongings, metes, and bounds of the aforesaid agricultural and grazing lands of the town site of Tumacácori

and its stock farm Calabazas, and to construct and maintain on the said possession the necessary monuments of stone and mortar, under the penalties established by the laws in case of neglect.

It was ordered and required that the various authorities should not permit the said Aguilar nor his successors to be in any manner molested or interfered with in the free exercise of dominion over the lands referred to, but that they should be protected and maintained in the quiet and peaceable possession and enjoyment of the same, to which they were entitled by legitimate right; that Aguilar and his successors possessed the full right of disposition of the lands as absolute owners and proprietors thereof, "with the understanding also that just as soon as the original titles of said agricultural and grazing lands are obtained they shall be aggregated to the present ones, and the transmittal and delivery of said original documents are considered as made and verified from this moment in favor of said party in interest, Don Francisco Alexandro Aguilar." This refers to the title of 1807.

On April 19, 1844, Ignacio Lopez, with his attending witnesses, José Maria Mendosa and José Diego Labandera, concluded the granting clause in the following terms :

In which terms I have issued this title of formal sale, transfer, and adjudication to said Mr. Aguilar, his heirs and successors, delivering it to the former for his security and other convenient uses, *after entry thereof in the proper place.*

It is evident that this clause provided for some record other than leaving on file the *expediente*, and, from the

practice in such cases, the proper and regular entry should have been in the book commonly called the *Toma de Razon*.

No possession was ever taken by Aguilar, and no attempt to exercise any act of ownership on his part anywhere appears in the evidence.

The form of this instrument, to wit, that part which should be the *testimonio* of the *expediente*, and which should be preceded by the preamble (original) and followed by the granting clause (original), is unusual in this, that none of the proceedings leading up to the final issuance of the grant seem to be copied, except the third *almoneda* (R., 281-282) and this discloses the fact that the sale was not made by any board of sales, whether an attempt was made to sell under the law of April 17, 1837, or that of February 10, 1842, or not. This instrument was, however, identified on the trial by Eufemio Tapia as the instrument given to himself and Gutierrez from the archives when making their examination in the early part of 1857. (R., 45.)

Exhibit E (R., 284-285) purports to be a copy of a conveyance from Aguilar to Manuel Maria Gandara, dated at the port of Guaymas, March 31, 1856, in which it is stated that Aguilar appeared before the judge of the second instance at Guaymas and exhibited the title and a copy thereof, upon which copy, consisting of thirty-nine sheets, was indorsed the said conveyance from Aguilar to Gandara. On March 27, 1856, Ramon T. Cuen, judge of the first instance of Ures, made a copy of the *titulos* of 1807 and 1844, which copy consisted of thirty-nine leaves. The genuineness of the signature

and regularity and form of the certificate of Judge Ramon T. Cuen were certified to by the governor, José Aguilar (R., 285). On October 10, 1861, it was evidently thought necessary to further strengthen the various certificates which had been made, and a notary public, Jesus Meneses, was called upon to certify to the genuineness of the signature and official character of P. de Valois, before whom purports to have been executed the original deed, indorsed on the copy of the *títulos* of 1807 and 1844 (R., 284).

Exhibit F (R., 285-287) purports to be a conveyance, dated March 2, 1869, from Francisco Aguilar to Don Miguel Gandara, for and on behalf of his father, Don Manuel Maria Gandara, of the lands called Tumacácori, Calabazas, and Huebabi, which lands, it is alleged, belong to Aguilar by virtue of a title of sale made by the treasurer-general of the department of Sonora in 1844, which is based on the primitive title issued in 1807 for the lands of the natives of Tumacácori as a *fundo legal* of their *pueblo* and stock farm.

Counsel for the Government offered in evidence (R., 231) a certified copy of an affidavit, the original of which was on file with the Commissioner of the General Land Office, in the matter of the claim for the confirmation of this grant under the law of July 22, 1854, and the law of July 15, 1870, extending the provisions of the earlier law over the Territory of Arizona. This seems to have been omitted from the record, and is as follows:

Personally appeared before me, a notary public in and for the county of Pima, Territory of Arizona, United States of America, Manuel Escalante,

who, being duly sworn according to law, deposes and says as follows, to wit:

That he is a Mexican citizen; has practiced law many years in his own country, and resides at present in Nogales, county of Pima, Territory of Arizona, United States of America;

That he was personally and intimately acquainted with Francisco Alexandro Aguilar, Manuel Maria Gandara, and Miguel Gandara during their lifetime, and that they are the same persons whose names appear in the alleged deeds of the several sales of the "Tumacácori and Calabazas private land claim;"

That the said Francisco Alexandro Aguilar and Manuel Maria Gandara were brothers-in-law;

That for many years he has known of the sale of the "Tumacácori and Calabazas private land claim," alleged to have been made by the federal government of Mexico to the above-mentioned Francisco Alexandro Aguilar, in the city of San Fernando de Guaymas on the nineteenth day of April, eighteen hundred and forty-four;

That he has also known of the sale of the same "Tumacácori and Calabazas private land claim," alleged to have been made by said Francisco Alexandro Aguilar to the aforesaid Manuel Maria Gandara, in the city of San Fernando de Guaymas, on the second day of March, eighteen hundred and sixty-nine;

That likewise he knew of the sale of the said "Tumacácori and Calabazas private land claim," alleged to have been made by said Manuel Maria Gandara and Miguel Gandara, through their attorney in fact, Guillermo Andrade, to C. P. Sykes and John Currey, in the city and county of San Francisco, State of California, United States of America, on the twenty-fourth day of July, eighteen hundred and seventy-seven.

That his information of the several sales herein mentioned, except the last, came direct from the aforesaid Francisco Alexandro Aguilar;

That the aforesaid Francisco Alexandro Aguilar told him that Manuel Maria Gandara, herein above mentioned, had put his name in the alleged deed of the nineteenth of April, eighteen hundred and forty-four, transferring the said "Tumacácori and Calabazas private land claim" from the federal government to himself, the said Francisco Alexandro Aguilar, and likewise, in the same manner, to the alleged deed of the second of March, eighteen hundred and sixty-nine, transferring the said "Tumacácori and Calabazas private land claim" from said Francisco Alexandro Aguilar to the said Manuel Maria Gandara, and that he, Francisco Alexandro Aguilar, had never owned said lands, but simply acted as requested.

And further deponent saith not.

(Signed) M. ESCALANTE.

Subscribed and sworn to before me at my office in Nogales, Pima county, Arizona, this eighth day of July, eighteen hundred and eighty-nine.

(Signed) D. J. CUMMING,
Notary Public in and for Pima County.

Another proceeding to which it is desired to call the attention of the court is to be found in the documents marked 1, 2, 3, and 4 in the record (pp. 240, 241). These documents were evidently introduced to show that the *expediente* or *matrix* of the Tumacácori, Calabazas, and Huebabi grant was in the archives in 1857. Exhibits 1, 2, 3, 4, 5, and 6 (R., 235-239) were introduced to identify Toribio Gutierrez and Eufemio Tapia. The instrument offered in evidence as being the title of 1844 (R., 263)

shows by its recitals that the *matrix* (*expediente*) of 1807 was not in the archives in 1844. The list of *expedientes* on file in the archives which was made up at the instance of the Mexican and national government in 1855, shows that neither the *expediente* of the grant of 1807 nor that of 1844 was in the archives. (See Official Report of Special Agents Tipton and Flipper, etc., pp. 2, 3.) Eufemio Tapia, called as a witness on behalf of the claimants, and who is alleged to have signed document marked "(1)" (R., 240), was handed the document on file with the surveyor-general and now before this court, known as the title of 1844, and was asked to examine the same and say whether or not it was the paper that was sent to him in 1857; he replied, "If I am not mistaken, that is the same" (R., 45). He was the chief clerk of the treasury department and was afterwards acting auditor or treasurer-general. As has been before suggested, this document, purporting to be the grant of 1844, handed to the witness Tapia, and now before this court, is not the *matrix* (*expediente*), but is the *titulo*, and it therefore had no rightful place in the archives and possessed no value as evidence in the manner in which it purports to have been executed.

Taking the condition of these papers, commencing with that of 1807 and down to the deed of 1869 (Exhibit F, R., 285), and considering the absence of all evidence as to the existence of any note, minute, or memorandum of them in the archives and the absence of any note in the book of *toma de razon* for 1844, which book is still in existence, justifies a serious doubt as to the *bona fides* of this latter grant of 1844. Such doubts are justified by

the absence of all evidence of any possession of the property by Aguilar, the grantee. The evidence discloses that the earliest date at which any possession of any of this property was claimed or exercised was about 1852, and the weight of the testimony upon this point, introduced by claimants, was that this possession was first claimed or exercised in the years 1853 or 1854. It will be noted that the evidence of possession, either in 1852, 1853, 1854, or 1855, seems to have been by Gandara through his herdsmen, during which time it does not appear that Gandara had obtained any right or interest in the property from Aguilar or anyone else. Nor does it appear that Aguilar ever pretended to exercise any acts of ownership or control over the same or had any interest therein except as shown by Exhibits E and F. (R., 284-286.)

From the *titulo* of 1807 it appears:

The Indians of the mission of Tumacácori made application to Alejo García Conde, the intendant of the provinces of Sonora and Sinaloa, for a *fundo legal* or "town site" and for land for a stock farm for their mission. Application not dated, but it was received in the intendency December 17, 1806.

Application was made under article 81 of the Royal Ordinance and Instructions to Intendants of December 4, 1786 (R., 265). It appears from the application that an allotment had already been made to this same pueblo at some former time, but that the documents had been lost, and it is clearly and positively stated that the terms of those documents and the extent and boundaries

of the lands then allotted were absolutely unknown. (*Ibid.*) It is requested that a new allotment be made and that the lands allotted be surveyed under the provisions of the royal orders on the matter. (*Ibid.*)

It is requested that four leagues be measured, one league to each wind.

It is further requested that land for a stock farm be allotted to the same, and that the place known as Huebabi be allotted to them for that purpose and so surveyed as to include the land at the mouth of the Potrero creek.

This application, signed by Ignacio Diaz del Carpio for the applicants, as their attorney, was received in the intendancy December 17, 1806. On the same day Don Manuel de Leon, commandant of the *presidio* of Tubac, was commissioned to survey the lands at such times as the duties of his office would allow. He was specifically instructed to survey a *fundo legal* of "one league to each wind, or the four wherever is most convenient, of the best and most suitable lands near their town, without prejudice to third parties, and after summoning the coterminous owners, if any there be." He was also instructed to survey a stock farm, "*to include at most two sitios,*" in the place most convenient to said natives. (R., 266.)

This commission was delivered to Don Manuel Leon by Juan Legarra, governor of the Indians, and was accepted by him January 13, 1807. (R., 267.)

It was ascertained from the Indians themselves and from old residents of Tubac that there were no coterminous owners in any direction except those of Tubac

itself, and it does not appear that they were summoned, as directed by the intendant in his commission to Don Manuel Leon, to show their titles or to witness the survey. (R., 266.)

Assistants were appointed and duly sworn. (R., 268.)

SURVEY OF "FUNDO LEGAL."

Survey of the *fundo legal* was begun at the mission of San Jose de Tumacácori on January 14, 1807. This paragraph in the *expediente* (R., *ibid*) is somewhat obscure. It states that in the time of the late Governor Pineda an agreement was made—between whom is not stated—by which the valley lands down the river from the Tumacácori mission were given to the Indians. It is also stated that his excellency gave the Indians authority to take what was lacking in any other direction that was most convenient to them. It does not state what was lacking.

The commissioner made the survey with a compass in good adjustment.

Fifty cords were measured north to the south line of the *presidio* of Tubac. Three hundred and thirty-two cords were measured south to a point "on the upper side, adjoining the gulch, close to the place called Calabazas."

It is not stated that a monument was placed here (R., 269), though one is referred to as having been placed here. The surveyor returned to the center, and seven cords were measured east "from the channel of the river" (R., 269). Observe that these seven cords

were measured east "from the channel of the river." The distance from the center to which they returned is not given. It is, as a matter of fact, about a quarter of a mile from the cemetery to the river, and the old irrigating ditches are evidence that this distance could not have been less when this survey was made.

They returned again to the center and measured eleven cords therefrom to the west.

With the measurement of these four lines, or really two lines, and the placing of piles of stones to mark the places where the monuments should be built, the survey terminated. No side lines were surveyed and no corners located. The agricultural lands in the valley were covered by the survey, and also some barren land on the east and west sides of the same. The survey was made to the satisfaction of the commissioner and the Indians, and signed by them and the assistants with that understanding.

It appears from the dates given in this *expediente* that the lines hereinbefore described and the north and south line of the stock farm were all measured in one day, the 14th of January, 1807.

SURVEY OF THE STOCK FARM (ESTANCIA).

The center or starting point of the stock farm was designated by the Indians January 14, 1807, and marked by a pile of stone. (R., 270.)

The designation of this point, the center or starting point of the "*estancia*," is important. A point was taken in the bottom along the river and was marked by a pile of stone. This pile of stone has disappeared and

there is now no means of determining where it stood. The description of the survey though precise is far from being definite.

From the designated center a line was measured north eighty cords to the south monument of the *fundo legal*.

Returning to the center, fifty-five cords were measured south to a point beyond the old mission of Guebabi.

January 15, 1807, twenty-seven cords were measured east from the center to a hill. Observe the language of the Spanish (R., 245). (R., 271.)

The line last described deserves attention. If this course be reversed and run west from the most southern point, or from any point of the San Cayetano Mountains, it will be entirely north of the most northern point of the "*estancia*" as described in this survey, or, in other words, there is no point whatever within the *estancia* from which a line can be run east to any point whatever of the San Cayetano Mountains. This last line is simply impossible.

From the center on the same day thirty-eight cords were measured west to the slope of the highest hillock (*loma*) seen from the Potrero.

In the survey of the stock farm a north and south line of one hundred and thirty-five cords and an east and west line of sixty-five cords were measured, inclosing an area equivalent to eighty-seven hundredths of one *sitio*.

It would seem that the intention was to survey a tract two leagues long by one league wide, or two *sitios*.

The survey of the stock farm was also made to the satisfaction of the commissioner and of the Indians, and the proceedings signed by them with that understanding.

On January 17, 1807, the commissioner's report, that is, the *expediente*, was delivered to the governor of the Indians for transmittal and delivery to the intendant at Arizpe.

No monuments were built, but piles of stone put up to mark the places where the monuments should be constructed, and that in the granting clause (R., 278) the intendant cautioned the Indians to "put up and maintain solid monuments of stone and mortar." This has always been the practice in Mexico, and is to-day. There is no evidence whatever that any such monuments were ever put up, and the probability is none were ever put up. Whether they were or not is important in the matter of the identification made by the surveyors in the employ of the claimants.

On December 23, 1806, a petition was presented to the commissioner by the Indians, and BEFORE THE SURVEYS WERE MADE, requesting him to summon certain old residents of the valley and to question them as to the monuments and boundaries of the mission. In this petition the governor of the Indians, for himself and for them, states: "*I know certainly and positively that this mission is bounded in the direction of Hucbabi by the ranch of the Romeroes, the monument of which still exists to-day beyond Yerba Buena, * * ** and in the direction of the Potrero the survey reached the point of the marsh." He also states the land had been *bought with money* (R., 272). *If bought*, it was not an allotment to Indians under the royal decree of October 15, 1754, cited in these proceedings, though the present disposition of

these lands is such an allotment. *The governor in his application for these lands said (R., 265) the extent and boundaries of the mission lands are unknown, and the commissioner says (R., 267) there were no coterminous owners in any direction except the presidio of Tubac. These statements are very contradictory, to say the least.*

This petition was granted, and on December 24, 1806, January 7 and 9, 1807, three witnesses were examined. (R., 273, 274.)

The testimony of these witnesses has some bearing on the location of the centre. They all testify to the *approximate* location of three monuments and no more—one near the Yerba Buena, on the line of Buenavista or ranch of the Romero, one at the upper point of the big marsh, and one on a flat table-land in the Sonoita cañon. One witness describes this last as the east monument, and another describes it as the south monument, neither of which is really possible.

This last witness further testified that the original titles of the mission lands were in the possession of a "Corporal Eugene," who learned to read and write from them. They must have been in his possession a considerable length of time.

It further appears by their testimony that a Don Manuel Carrera, or Don Manuel de la Carrera, had in his possession the papers or titles of the lands of the mission, those of the ranch of Buenavista or ranch of the Romero, those of all other tracts in the direction of Huebabi and in the valley of the Potrero. If such statements were true, there were other lands, then, near Huebabi

and in the valley of the Potrero besides those belonging to the mission of Tumacácori. The mission of Tumacácori did not own all the valley of the Potrero nor even all the valley of the Santa Cruz in the neighborhood of Huebabi, consequently it could not be subject to sale as temporalities.

These witnesses testify as to the possessions of the mission held under the titles said to have been in the possession of Don Manuel de la Carrera and declared to have disappeared after his death, and state that the western monument was at the upper point of the big marsh (this fixes approximately the west center monument of the *estancia*); the eastern monument in the testimony of one witness, and the southern in that of another, was on a flat mesa or table-land in the Sonoita cañon, and the third beyond Yerba Buena, in the line of the ranch of the Romero. Not a word is said about the north cardinal monument.

The claim is made for 9,515.8 acres, or 2.19 *sitios*, as the *fundo legal* of Tumacácori, and for the *estancia* 63,730.9 acres, or 14.6 *sitios*. These areas are obtained by ignoring the measurements alleged to have been made by surveyor Manuel Leon, in April, 1807, and by ignoring the location of natural objects evidently well known then and well known at the present time; also by ignoring the order of Intendant Conde, dated on December 17, 1806 (R., 266-267), wherein it is stated, "besides the four leagues, there shall be adjudicated to them an *estancia* for stock of the larger kind, which shall include AT THE MOST TWO SITIOS, in the place most convenient to those natives." This limitation was exceeded by 12.6 *sitios*.

In 1892 Mr. Roskrue purports to have made a survey of this grant, the plat of which is found in the record (R., 6), wherein he estimates the area for the *fundo legal* of Tumacácori at 9,200 acres and the *estancia* at 72,150 acres.

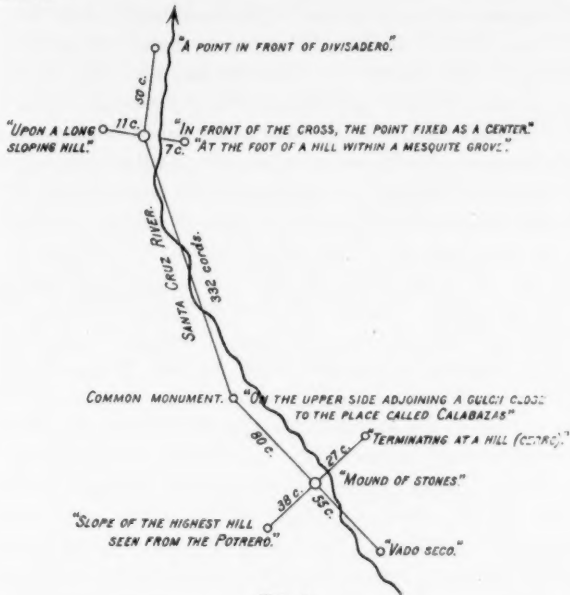


FIG. A.

The surveys of this grant, made by Leon in 1807 and by Mr. Bonillas in 1895, when examined with reference to the testimony of the same given by Mr. Bonillas (R., 102), must impress one with the fact that the old Mexican surveyors were quite as accurate as the modern Mexican "*perito agrimensor*."

Figure A is an unscaled sketch of the lines purporting to have been actually run by Leon in 1807, at the end of which lines should appear the natural objects called for, together with the monuments or piles of stone; if the latter exist as of 1807, they are about the only things the Indians are not charged with demolishing, and from the photographs of them contained in the record (p. 284), lapse of time and the destructive hand of the Apache have added beauty and distinctness, if not importance.

The foregoing sketch shows the only lines of the Tumacácori, Calabazas y Huebabi private land claim, that purport to have been actually run and measured by the original surveyor, Don Manuel de Leon, in 1807.

ANALYSIS OF THE SURVEY OF THE TUMACÁCORI, HUEBABI Y CALABAZAS GRANT IN ARIZONA, MADE BY LEON IN 1807.

The survey of the Tumacácori was all made on January 14, 1807, the center or starting point being taken at a point in the burying ground, "in front of the cross, the point fixed as a center." (R., 269.)

From this point, marked on the accompanying sketch, Fig. A, fifty cords of fifty Castilian varas each were measured "north and down the valley," and terminated "at a point in front of the *divisadero*" (lookout hill) on the south boundary of the *presidio* of Tubac. (R., 269.)

From the same center point "in front of the cross" three hundred and thirty-two cords were measured south, upstream, terminating on the upper side of the tract on a gulch close to the place called Calabazas. (R., 269.)

It is contended by the Government that the termination of this measurement was on the upper side (up the river) of the *fundo legal*, and not the upper side of any one of the many gulches near Calabazas; and by Calabazas is not intended the ruins of the church of the same name, but the tract of land, formerly the *sitio*, of that name.

The surveyor returned to the same center point "in front of the cross" and measured seven cords eastward, NOT FROM THAT CENTER POINT but from the river, which lies to the east of the center point a distance not given. The seven cords terminated "at the foot of a hill within a *mezquite* grove." The distance from the center point "in front of the cross" to the point "at the foot of a hill within a *mezquite* grove" is not given; hence the length of this line is not known. (R., 269.)

From this same center point "in front of the cross" eleven cords were measured west and terminated "upon a long sloping hill." (R., 269.)

This completed the survey of the "*fundo legal*" of the Tumacácori, as shown on Fig. A herewith.

No side or end lines were surveyed and no corner monuments were built or described.

But the side lines of this survey, following the law and custom of Spain in such matters, should run through the outside points and be parallel, respectively, to the lines actually surveyed.

The actual distance from the center "in front of the cross" to the point "at the foot of a hill within a *mezquite* grove," as located by claimants, is 25.37 cords.

Assuming this to be the correct distance actually measured January 14, 1807, the area surveyed for the "*fundo legal*" of the Tumacácori would be 1.38 *sitios* or square leagues, which is 38/100 of a *sitio* in excess of the amount allowed for Indian towns by Law VIII, Book VI, Title III, Compilation of the Indies, as follows:

Law VIII.—That Reductions be made with the conditions of this law.

The sites on which Towns, and Reductions are to be established, shall have sufficient water, land and timber, entrances and exits, and tillable lands, and commons one league in length, where the Indians can keep their stock, without becoming mixed with other stock belonging to Spaniards.

The survey of the Calabazas y Huebabi under the name of *estancia* or pasture grant was made January 14 and 15, 1807.

The center or starting point was "the meadow by the river side, * * * at which point I ordered a mound of stones to be placed." (R., 270.)

From this "mound of stones" eighty cords were measured north, "terminating at the same monument fixed to the agricultural lands, the same being in one body." (R., 270.)

From this same "mound of stones" fifty-five cords were measured south, "terminating on the very slope which descends into the lowland or water course that runs toward *vado seco* (dry ford or crossing)." (R., 270.)

From this same "mound of stones" twenty-seven cords were measured east, "terminating at a hill (*cerro*)" (R.,

271), where it was impossible to proceed further "*por lo muy fragoso é inasesible de montes escarpado de Cerros*" (R., 249), that is, "on account of the great roughness and inaccessibility of the timber and the precipitousness of the hills." The translation of this passage by the words, "on account of the ruggedness of the country" (R., 271, line 23), is incorrect.

The pile of stones at the end of these twenty-seven cords was placed "at the foot of said hill (*cerro*) of San Cayetano." (R., 271.)

From this same "mound of stones" thirty-eight cords were measured west, "terminating on the slope of the highest hill seen from the Potrero," at which was placed another pile of stones. (R., 271).

"*Potrero*" was the name of the *Cienega grande*, or big marsh.

This completed the survey of the Calabazas and Huebabi, known as the *estancia* or pasture grant.

No side or end lines were surveyed and no corner monuments located or described.

The area surveyed for the *estancia* or pasture grant, as comprised in these monuments, is 87/100 of a *sitio*. Claimants have surveyed and claim 63,730.9 acres, equivalent to 14.6 *sitios*.

The survey of these two tracts is shown on Fig. A herewith. No more surveying was done than is laid down on that sketch.

MR. BONILLAS'S SURVEYS.

An analysis of Mr. Bonillas's survey, in connection with his testimony (R., 102 *et seq.*), will show his disregard of the courses and distances and natural objects mentioned in the survey of Leon of 1807, although he claims to have made the survey, disregarding the courses and distances, but being governed by the natural objects called for. From his testimony it is apparent that he has had sufficient experience to state that in perhaps a thousand or more cases where he had investigated the courses and distances of lines he may have found five or ten that agreed with the calls of the title papers in courses and distances (R., 104), and that to his knowledge every one of his surveys had been approved and titles issued for the *demasias* whenever that was the object of the survey; that the quantity of land called for in the title papers varied much from the actual quantity as shown by the surveys when approved. In a great majority of cases there was a great excess of land inside of the monuments over the areas called for in the title papers. (R., 105.)

THE FUNDO LEGAL.

In making the survey of the Tumacácori and Calabazas grant he took his notes for the same from the title papers or *testimonio* of the grant. The map which he made from his notes is found in the record. (R., 347.) He had no difficulty in finding the ruins of the old Tumacácori mission church and the graveyard, which was well preserved.

First line.—He tried to find the north center monument, but could not do so (R., 108); it was said to have been halfway between the old mission and the *presidio* of Tubac. He took as a center the little chapel surmounted by a cross within the inclosed graveyard (Photographic Exhibit R.) Not having found the north center monument, when he got in front of the *divisadero*, on the west edge of the valley, he found a very large old monument of loose stones, and on top of the *divisadero* he found a similar monument. The title he had in his possession at the time said that the surveyors did not go any farther north or down the river with the survey on account of meeting the boundary line of the lands of the *presidio* of Tubac, and the two large monuments that he found he had reason to believe were the monuments of the town lands of Tubac, and had been adopted as the monuments of this *pueblo* grant. He described the *divisadero* as a hill which rises above the rest of the low rolling hills which are characteristic of the banks that were about that part of the valley, and that the name was very appropriate, because from its top one could see all around the country, and it was about halfway between Tumacácori and Tubac. He concluded that he would take the *line cutting the two monuments that he found as the north boundary of the lands of Tumacácori.*

The placing of the northeast corner monument on the *divisadero* by Mr. Bonillas simply because he found a pile of stones there is wholly unwarranted by anything in the *testimonio* of title or elsewhere, as Leon did not place or order to be placed any such pile of stones or other

monument. The only pile of stones Leon pretended to have constructed was the one in the valley between the *divisadero* on the one side and the cottonwood trees on the other. (R., 269.)

Second line.—As to the second line of the *fundo legal*, Mr. Bonillas states (R., 109-110) that, standing upon an eminence west of the mission, looking over the top of it at right angles to the course of the valley, he saw a *mezquite* grove and some small hillocks (*lomas*), and as the title papers said that they measured from the river channel to the foot of a hill in a *mezquite* grove to establish the east center monument, he went to the same, and it was the mouth of a little gulch where he found an old monument of loose stones nearly covered up by the erosions of the waters coming from that little gulch. As that answered the description contained in the title papers, he believed it to be the east center monument of the grant. Leon, in order to establish this monument, measured carefully from the bed of the river seven cords, etc. (R., 269.) Photographic Exhibit S (R., 284) was shown and identified as the pile of stones in the *mezquite* grove. I am inclined to think that time and the Apaches did not deal as kindly with this monument as they did with several others.

Third line.—Mr. Bonillas states (R., 110) that the west center monument was described as being about 11 *cordeles* in a westerly direction from the graveyard upon a long sloping hillock, and on top of just such a hill he found a very large monument. Photographic Exhibit T was shown and identified as being this monument, and this photograph is a sufficient criticism of its

ancient construction. The place where this monument was said to have been established in 1807 was called the *mezquite seco* or dry *mezquite* tree. Photographic Exhibits U, V, and W were identified as having the appearance of *mezquite* trees there.

Fourth line.—Mr. Bonillas says (R., 110–111) that he went to look for the south center monument. The title papers said that it was 332 *cordeles* to the south along the valley on the upper side adjoining the gulch near the place called Calabazas; that he went to Calabazas, which was quite well known, and south of it there was a gulch which was quite close to the ruins of Calabazas. On the upper or southern side he looked for the monument, but was disappointed that he did not find it, and he thought that just exactly the place where it ought to be. Upon looking at the title papers, however, Mr. Bonillas states, he found there was no mention of a monument having been established there, and that he supposed the description of the topographical conditions of the place was so precise that they did not perhaps deem it necessary to establish a monument, but he could not fail to accept that place as the place called for. Mr. Bonillas's examination of the title papers at that time must have been rather superficial, as Leon, the surveyor, in surveying the first line of the *estancia*, says that in running towards the north there was measured eighty cords, the line terminating at the same monument to the agricultural lands, the same being in one body (R., 270). Mr. Bonillas says further that he gathered from the title papers that all the agricultural lands in the valley of the Santa Cruz River and those adjoining it and a few *cordeles*

to the east and west of the valley were intended to be included, and he determined to make a survey so as to take in all these lands literally, just exactly as called for in the title papers, and he established a series of trigonometrical stations on both sides of the valley; that he made a complete triangulation of those lands, and while he was going around with his helpers putting up his trigonometrical flag stations he noticed on the edge of the valley just where he would make a survey in accordance with the calls of the title papers monuments on both sides which with but very few exceptions were old, and there were between 33 and 34 of them in all. In his cross-examination (R., 127) in relation to these station monuments, he states that he does not think the Mexican surveyors put them up, but his theory is that the natives monumented their lands along the edges of the valley to know what they had. When asked as to whether he found other monuments, he stated that he did not reconnoitre in the country at all; that he took all the monuments that could be used to enclose the valley; that he was making his survey, and was going to points he *needed to go to*; on the west line of the valley his stations with perhaps two exceptions were old monuments, but he did not believe they were established by the surveyors in 1807.

THE ESTANCIA. (R., 112-121.)

The center of the *estancia* is said to have been established in the lowland of the riverside at the place called Huebabi; it was not at the old mission of the valley, but below, at a place well known as Benedict's ranch. The

place established as a center is about a mile northwest from the ruins of Huebabi. Photographic Exhibit X was shown and identified as a monument built by himself there. The description in the title papers would be answered by almost any point in front of that (the ruins), and so he chose this point in the meadow close to a very noticeable prominent clump of cottonwoods.

First line.—Mr. Bonillas says (R., 112, 113) that the title papers called for the north center monument of the *estancia* as exactly the same point as the south center monument of the agricultural lands, and that the agricultural lands and the lands for the *estancia* formed one body, and he took the same point as the north center monument of the *estancia*.

Second line.—He says (R., 113), that the south center monument is said to have been established on the slope which descended into the lowlands or water course that runs toward the *vado seco* ahead of the town or ancient mission of Huebabi. The point in the Santa Cruz River called *vado seco*, or dry ford, is well known. He says he went up the water course and looked for the monument on the edges of the valley, and there and right close to the place where the old trail used to pass, and on the slope extending into the water course which runs to the *vado seco*, exactly in accordance with the description, he found a very old monument of loose stones, a photograph of which he identifies as Exhibit X. Photographic Exhibit Z he identifies as the *vado seco*. As Mr. Bonillas built the monument in Photographic Exhibit X recently, and in a country so exposed to the elements

and the Apaches as that must have been, we are a little incredulous as to whether or not the monument in Exhibit Z was built in 1807 or not. At least Mr. Bonillas did not take this as the south center monument of the survey of the *estancia*, but concluded to go about three miles further south (R., 114), and he attempts to justify this action on the testimony alleged to have been taken by Leon on December 24, 1806, and January 7 and 9, 1807 (R., 273, 274), upon the complaint made by the governor of the Indians claiming the lands as far as Yerba Buena by purchase. (R., 272.)

This complaint was directed to Don Manuel Leon. It appears from the dates that the concession was made by Conde on December 17, 1806 (R., 266); that Leon qualified on January 13, 1807, and announced the fact to the Indians that he would proceed to the measurement and survey of the said mission of Tumacácori (R., 269). On the same day Leon certified that he inquired what individuals were owners of land adjoining, and being informed that there were no *colindantes* in any direction save the *presidio* of Tubac, he ordered the same to be included in the proceedings. (R., 267.) On the same day those who were to assist him in the survey were appointed. (R., 267, 268.) On January 14, 1807, he states that he proceeded to the mission with his assistants and five residents for the purpose of commencing the measurement of the lands pertaining to the mission, etc. (R., 268.) The field notes of the survey of the *fundo legal*, commencing on January 14, 1807, are fully set forth. (R., 269-271.) Not one word is mentioned in these formally concluded proceedings by Leon that the line from the center

of the *estancia* to the *vado seco* was to be extended any farther, or that there was such a place in existence in that country as Yerba Buena; yet the petition dated December 23, 1806 (R., 272), and the affidavits dated respectively December 24, 1806 (R., 273), and January 7 and 9, 1807 (R., 274), are now referred to as authority for this extension, when, as a matter of fact, they are dated prior to Leon's qualification and prior to his having any authority to participate in the matter at all. One may well be excused for doubting seriously the original existence or truth of these affidavits, as no mention of them was made in any of the official proceedings by Leon, all of which occurred subsequent to their alleged date of execution. Photographic Exhibits A 5, B 5, and C 5 represent views of the south center monument, which has evidently been reconstructed.

Third line.—It may be well to state here that Mr. Bonillas found some difficulty in justifying the location of the east center monument, and only succeeded in doing so by ignoring the distance and the natural objects called for in the title papers. He states (R., 114) that the monument is described as having been erected at the foot of that side of the Cerro San Cayetano which looks toward the south, and that the survey was not extended farther east on account of the roughness and inaccessibility of the country, and for the further reason that the grantees petitioned the persons who were making the survey to add on the western or *potrero* side the rest of the lands to which they were entitled on the east. It does not appear by anything Mr. Bonillas has stated or anyone

else just what these people were entitled to. He says that the Cerro San Cayetano is known as a range of mountains which lies almost east of the starting point of the lands of Tumacácori, and so he concluded it must be a mistake, and he was further led to that belief by the fact that they are alleged to have run thirty-seven *cordeles* easterly from Huebabi, and that the measurement terminated at a *cerro*, and further along in the field notes it is stated that they could not go ahead on account of the roughness of the country, and they returned to the center. He said it was his opinion that the Cerro San Cayetano was not meant, because that would be an absurdity; that the Cerro San Cayetano was a little west of north and quite a distance from Huebabi; that the south line of the agricultural lands and the north line of the *estancia* lands was quite a distance south of the Cerro San Cayetano. At this point Mr. Bonillas again fell back upon the testimony of the three venerable Mexican witnesses alleged to have been taken before Leon in December, 1806, and January, 1807, before he had any official connection with the matter at all. (R., 117.) Based upon the testimony of these three witnesses, and concluding that the original surveyor had made a mistake, Mr. Bonillas undertook to rectify the same in his survey by hunting for another hill upon which he could find a pile of stones, and, as usual, he was successful, although he was compelled to go east of the center a distance of about five miles instead of about one mile or thirty-seven cords. Under the circumstances it is hardly conceivable how the survey could have been terminated and the remainder, to which they were legally entitled, could be given

them on the west or *potrero* side. Photographic Exhibit E 5 was shown and identified by the witness as the *cerro* at the foot of which was established a monument, and Exhibit D 5 is the monument which he established as one of his trigonometrical points. (R., 118, 119.)

Fourth line.—Bonillas says (R., 119–120) that in looking for the west center monument, which is described in the title papers as being situated on the fall (*caida*) of the highest hill that could be seen from the *potrero*, he could not see the *potrero* from the center monument of the *estancia*, but by going west, in a direction at right angles to the valley, there is a gulch that runs to some high lands lying between the valley of the Santa Cruz and the valley of the *potrero*, and by following this gulch up you come to the highlands, and then another gulch runs toward the *potrero*, and then these rolling hills (*lomerio*) can be seen extending to the west; going down the gulch is the *potrero*, and following to the west he came to the highest *loma* described in the title papers. On top of this there was a large monument and on the *caida* or slope was another monument, and this latter he considered as the west center monument of the *estancia*; that this *loma* was quite noticeable, arising above the rest of the rolling hills. Photographic Exhibit G 5 was shown and identified as the monument which stands on top of the *loma*, with Mr. Bonillas's flagstaff in it. The monument on the slope was identified in Exhibit H 5. Mr. Bonillas further justified his selection of this point as a monument by the testimony of the three ancient witnesses referred to before. He stated there were other monu-

ments around the Cienega Grande and identified them in Exhibit I 5, which is a very excellent photograph of a monument evidently of modern construction, and Mr. Bonillas's credulity is to be wondered at after his long and ripe experience in surveying Spanish and Mexican land grants and in the search for and discovery of ancient landmarks and monuments.

In attempting to work out a correct location of the *fundo legal* and the *estancia* it seems that little or no credence or attention was given to the recitals contained in the instrument of 1807, which formed the basis for the grant of 1844. The result of the examination in chief of Mr. Bonillas, a summary of which has been attempted, reflects more credit upon his ability than it does upon his candor. The *fundo legal* of the *pueblo* of Tumacácori he assumes to have been originally four SQUARE leagues, and yet his examination upon the ground, and the results thereof indicated in his survey, negative his conclusions. The area contained in the *fundo legal* was a little more than two leagues, although it does not appear but that the boundaries upon the eastern and western sides thereof could have been so located as to bring within its area four square leagues. He stated (R., 123) that he "never followed courses or distances given in these title papers. I go to the topographical points described. I lost a good deal of time when I did that when I was first getting experience in surveying." His explanation of the manner he made his survey of the *estancia* is but an illustration of the extreme unreliability of his survey and location of the boundaries of the grant.

It is impossible for counsel to brief the testimony of Mr. Bonillas with any satisfaction to themselves ; therefore, the title papers (from which alone Mr. Bonillas says he obtained his data), the conclusions from his survey, his map, the wrongful location of the Cerro San Cayetano, all admonish counsel for the Government to refer the court to his entire testimony, to be considered with reference to the recitals contained in the field notes of the original survey of 1807, and his attempt to justify his disregard of both the natural objects and distances called for in the title papers upon the basis of the testimony of three witnesses, the integrity of which is successfully refuted on the face thereof and by the date of the affidavits themselves.

It is clear by the testimony of Colin Cameron, more interested than Mr. Bonillas in sustaining this and every other private land claim in Arizona, and who has, by his own testimony, been instrumental in the reconstruction of more monuments than were destroyed by all the Apaches that ever overran the country, that he dare not attempt to sustain the ancient origin of a number of Mr. Bonillas's monuments. In the face of all the testimony Mr. Bonillas could not justify the location of the east center monument of the *estancia* at a round bald hill five miles east of the center monument, when the grant clearly called for a distance of 37 cords, except to say that the original surveyors did not know what they were doing ; that they were mistaken, and their location was an absurdity. He can only justify, after thoroughly identifying the topographical features of the country at the *vado seco*, at the

place he expected to find it, his location of the south center monument of the *estancia* three miles south thereof and south of the Yerba Buena, by the testimony of the three ancient witnesses several times before referred to, whose evidence and the location of the point of Yerba Buena, it should be borne in mind, nowhere appears in any of the proceedings taken by Leon, the original surveyor, nor does it appear in the petition for or granting clause of the grant of 1807. This monument of the *estancia*, which was limited to two *sitios* at most, can be as well sustained and justified as many of the other monuments so readily found in company with Colin Cameron and his associates.

Another peculiarity of this survey will be observed in the offshoot on the east line of the *fundo legal* just south of the San Cayetano Mountains, and north of the line between the *estancia* and the *fundo legal*, by which Mr. Bonillas seeks to take in the lands up the Sonoita Creek as far as the narrows of the *cañon*, and this he does based upon his construction of the title papers as to what was intended to be granted and *intended* to be surveyed by Leon. (R., 125.) Whatever emergencies the claimants in this case may have been subjected to in order to sustain their claim, based upon the integrity of the examination upon the ground, there can be no excuse for the location of the *fundo legal* of the *pueblo* of Tumacácori for nine thousand acres and of the *estancia* for over 63,000 acres, which was limited by the granting officer to two *sitios* (8,677 acres) at most; and especially is this true when a surveyor, who has surveyed as many as a thousand of these claims, can give no better justification

for it than is contained in his testimony, that he paid no attention to the courses and distances, and it is evident from his location of the east center monument of the *estancia* that he paid no attention to the natural objects called for. In commenting upon his testimony, it may be said that as a surveyor he was equal to the emergencies demanded of him by the claimants.

If there was any limitation to be placed upon this sale of 1844, and the amount of land conveyed thereby was to be limited to an exact area by virtue of the sale of 1807, then the survey of Mr. Bonillas and the claim asserted can not be recognized, because, under the sixth article of the treaty of Mesilla (Gadsden purchase), the same had not been located at the date of the treaty. (*Ainsa v. U. S.*, 161 U. S., 208.)

If the lands attempted to be conveyed by the grant of 1844 were temporalities of the church, they must have had some definite and supposedly known area. Mr. Bonillas in construing (as he supposes) the legal effect of the recitals contained in the title papers, in order to account for his peculiar and remarkable survey, demonstrated that his legal knowledge failed him at a most critical point, as it can hardly be contended that the lands alleged to have been acquired by the pueblo of Tumacácori by purchase were temporalities of the church.

We find endorsed on the *titulo* of 1807 (R., 279) an alleged agreement between Ramon Liberos, a priest, in the name of the *pueblo*, and Leon Herreras, the alleged grantee of the Sonoita grant, by which a dispute as to the boundary between the lands of Tumacácori and Herreras (Sonoita grant) was settled. This agreement appears to have been

entered into before Don Elias Gonzales, commandant of the *presidio* of Tubac. The instrument states that they requested that the agreement be entered at the end of the *expediente* in possession of the interested parties as testimony in the matter. The date of this agreement is given as January 10, 1823. Neither the *titulo* of the Sonoita grant, produced as evidence of title in the case of *Ainsa v. U. S.*, No. 27, nor the *expediente* in the archives disclose such an agreement, and in the very nature of things could not, for at the date thereof, January 10, 1823, the grantee of the Sonoita grant had no evidence of title and obtained none until the issuance of title by Manuel Riesgo, commissary-general, May 15, 1825, more than two years after the date of this alleged agreement and after the *pueblo* of Tumacácori had been abandoned.

Mr. Bonillas in making his survey construed the clause in the concession of 1807 by Conde, the intendant, that "the said commission shall measure to the said nation one league to each wind or the four leagues where it may best suit them" (R., 266), to mean four *square* leagues, although he seems to have been unable to survey more than two and nineteen-hundredths leagues as an area for the *fundo legal*.

Indian towns were limited to one square league. (Laws of the Indies, VIII, Book VI, Title III, *supra*.)

The manner in which surveys were to be made in New Spain has been defined by Escriche and also by Galvan as follows :

HOW SURVEYS WERE MADE IN NEW SPAIN (MEXICO).

SITIO DEFINED.

[Escriche, Appendix, page 210, edition 1888. Also Galvan, Ordinances on Land and Water.]

In regard to the names and classes of lands, the following should be borne in mind :

There are three classes of lands, according to royal ordinances, the first of which are called *pan sembrar*, the second are called *pan coger*, and the third *pan llevar*. *Pan sembrar* lands are those for chance wheat ; *pan coger* lands are those that depend on the seasons, and *pan llevar* lands are those that can be irrigated—that is, that have water.

Each class of these lands has different prices, which are to be determined according to their location, qualities, distance, and circumstances, and the same is to be understood of the *sitio de ganado mayor*, *menor*, *criadero* or *caballeria* of land.

Besides these three classes, there are other lands that only serve for pasturing stock, and these are hillocks, mountains, and ravines.

Lands that are under cultivation—that is, subject already to the plow—in America are called *pan llevar*, in contradistinction to breeding and mountainous lands, as no wheat is planted in the rainy seasons on account of rust.

In regard to the method to be observed and followed in the survey of a *sitio de ganado mayor*, *menor*, *criadero*, or *caballeria* of land, it shall be as follows : If it is a *sitio de ganado mayor*, the first thing is to find the center, which shall be determined from its boundaries. Being at said center, there are to be measured therefrom, running east,

two thousand five hundred Mexican *varas*, which are fifty cords of fifty *varas* each. Returning to said center, there are to be measured therefrom, running west, another fifty cords, so that they have in length, from east to west, one hundred cords, which are five thousand *varas*. Returning again to said center, there are to be measured therefrom, running north, fifty cords, which make one hundred from north to south, the cord starting from the center for the four points mentioned.

But, in order that the measurements may be equal, the north must be determined and followed by the compass and from it the four winds, that the cord may be carried directly from north to south and from east to west, four monuments being placed, one at the end of each measurement, and to measure the four sides from them, proceed in this manner:

Being on the east side where the monument was placed, thence running north, there are to be measured fifty cords to where said *sitio* forms a corner or right angle. Having returned again to said monument, thence running south, there are to be measured another fifty cords to where it makes an angle, the east side being one hundred cords long.

Being at the other monument on the west, the measurement shall be made in the same manner, so that it shall start from the monument for the corner. Following the same method with the other monuments to the north and south, the measurements shall start so as to meet and form a right angle, until the figure closes; so that when a *sitio de ganado mayor* has been measured with a cord of fifty *varas*, it will be found to be as long as wide—that is, one hundred cords long by as many more in width, which makes five thousand Mexican *varas* or three thousand Solomon's paces, as has already been stated,

and from the center to any one of its sides there will be fifty cords, which is the half of a measured league. Whoever goes around this *sitio* will have walked four leagues, all of which we will better explain by means of Fig. 18, as follows:

This square represents a *sitio de ganado mayor*, the center of which is indicated by a heavy dot or small circle. Being then at the center fifty cords shall be measured therefrom due east, and at the point where the measurement terminates monument A shall be placed. Returning to said center a like measurement shall again be made, carrying the cord due west, and where it ends monument B shall be placed, so that there shall be from A to B one hundred cords.

Being at said center fifty cords shall be measured therefrom due north, and where the measurement terminates monument C shall be placed. Returning to the center a like measurement shall be made due south, and where it ends monument D shall be placed, and there shall be one hundred cords from C to D.

After this, being at monument A in the east side, fifty cords shall be measured therefrom from south to north—that is to say, due north. Having returned to the same monument, a like measurement shall be made from north to south and the east side EF shall have one hundred cords. This operation shall be performed in absolutely the same manner to measure the west side, HG, without other difference than to begin the measurement at the west monument, B, and said side shall have one hundred cords.

Being at the north monument, C, fifty cords shall be measured therefrom due east. Returning to the same monument, a like measurement shall be made

due west and the north side, EH, shall have one hundred cords and shall make right angles at H and E with the west and east sides.

If, when at the south monument, D, a like operation is repeated absolutely in the same manner, the south side, GF, will have one hundred cords, will make right angles at G and F with the west and east sides, the figure will close, and therefore the measurements will be completed.

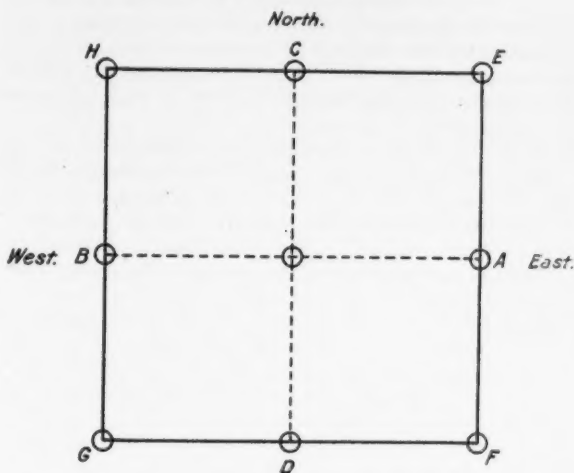


FIG. B.

SITIO DE GANADO MAYOR DEFINED.

The figure of a *sitio* for a stock farm is a square, each of the four sides of which has *five thousand Mexican varas*. Two of these sides should have a direction from east to west, and by a forcible consequence

the other two should be situated from north to south. The distance there should be from the center of said *sitio* to each one of its sides, running directly toward the points of the horizon, which are called cardinal, and are east, west, north, and south, is *two thousand five hundred varas*; that which should be measured from the same center to each one of the four right angles of said *sitio* should have *three thousand five hundred thirty-five and a half varas*, and that which should be measured from either of its angles to the other angle opposite should be *seven thousand and seventy-one varas*. If, in these measurements, use is made of the cord of fifty *varas*, each one of the sides of the *sitio* for a stock farm should have *one hundred cords*; from the center to each one of said sides there should be *fifty cords*; from the same center to each one of the angles there should be measured *seventy cords and thirty-five and a half cords*, and from one angle to the other opposite there should be *one hundred and forty-one cords and twenty-one varas*.

The area or surface of a *sitio* for stock is *twenty-five million square varas*, which results from squaring the number of *varas* which one of its sides has—that is, multiplying the number 5,000 *varas* by itself.

NOTE.—A *sitio* contains 4,338.464 acres.

RECORD.

The grant of 1844 appears to have been executed at Guaymas, April 19, 1844, at which time there was nothing in the archives indicating the extent of the lands which had been granted in 1807 to the *pueblo* of Tuma-cácori as *fundo legal* and *estancia*, and nothing appears to be in the archives to show the fact that Ignacio Lopez executed the conveyance of 1844. The record book

(*Toma de Razon*) for that year was there then and is there now; a book which had been carefully made up and each sheet thereof properly authenticated, and the whole properly certified at the date of binding in 1831. This book answered the purpose of such record of the issuance of grants as was customarily kept from 1831 to 1849, and it nowhere appears that any other was ever made up or used during that time. It is true that no entry of the fact that any grants were issued during the year 1844 appears, but this does not of itself establish the fact of the existence of another book and its use for the same purpose during that year. Grants issued immediately prior and subsequent do appear to have been noted, and the formality of its original compilation and authentication tends strongly to negative such a conclusion by counsel for appellants that the same was afterwards made up of loose leaves.

Another very significant fact appears in the absence from the archives in 1855 of the grant to the *pueblo* of Tumacácori, made in 1807, and the so-called grant to Aguilar of 1844, at which time a list of the *expedientes* was made for the commissioner of the national government under the celebrated decree of Santa Anna of July 7, 1854 (*Reynolds*, 326), so often referred to and discussed before this court. If on February 8 and 10, 1857, when Tapia and Gutierrez were overhauling the accounts of the treasurer, these present documents or either of them were found, the question arises, How did they get there and from what source did they come? Tapia in his testimony (R., 45) identified the instrument of 1844, produced on the trial as evidence of title, as the same

instrument examined by them at that time. Neither at the date of the attempted sale by Lopez of the *pueblo* lands of Tumacácori as temporalities of the church, nor subsequently, was there anything in the archives showing the fact that the *pueblo* ever held title to any of this land. The sale by Lopez to Aguilar at Guaymas in 1844 never became a part of the archives, and at the date of the treaty, December 30, 1853, and on January 26, 1855, nothing appeared to show the fact of its existence, and the only evidence that the *expediente* ever existed is to be found in the letters of Tapia and Gutierrez to the treasurer-general, dated February 8, 1857 (R., 240) and his unsigned reply of February 10, 1857 (*Ibid.*).

Examining the correspondence leading up to the letters of Tapia and Gutierrez, it appears that Governor Pesquiera on January 15, 1857, directed a letter to the treasurer of the State of Sonora, stating that Francisco Gandara had in the May previous withdrawn as bondsman in favor of the *contador* of the treasury, Don Manuel Arvisu; that by reason thereof an examination of the treasury was necessary and he had appointed José Toribio Gutierrez to make the examination and inspection, commencing with the day the treasurer, Don Antonio Morales, was called to take charge of the American custom-house, and requesting that there should be placed at his disposal the funds, books, and archives of the office. (R., 235.)

An unsigned reply to this communication is translated in the record (Exhibit 4, pp. 237-8), in which is acknowledged the receipt of the same, promising to comply with

the order, and criticising the attempt of Francisco Gandara to be released from the bond ; stating also that José Aguilar, who was governor at the time of the withdrawal, had not taken up the matter because of the revolution. This communication is dated January 21, 1857.

An unsigned letter to the superior chief of the treasury of the state, of the same date, states that Gutierrez had presented himself for the examination (R., 238); following (R., 238) is an unsigned instrument, of the same date, transmitting the whole thereof to his excellency, by Toribio Gutierrez.

The next communication seems to be one directed by Gutierrez, the commissioner of the Government, to the *contador* of the treasury, Don Manuel Arvisu, suspending him from office and appointing Don Eufemio Tapia in his stead, dated February 4, 1857. (R., 236.)

On February 8, 1857, a letter was written by Gutierrez and Tapia to the *contador*, Don Maria Arvisu, stating that in order to complete their report it was necessary to have before them the *expedientes* of the ranches of Tumacácori, Calabazas, Cocospera, and San Pedro de Arivaca, and requesting that they be transmitted to them. (Exhibit (1), R., 240.)

Replying to that letter is an unsigned copy of a letter, dated February 10, 1857, directed to the treasurer-general of the State, purporting to transmit the *expedientes* of the measurements of the ranches La Casita, Calabazas, Tumacácori, and San Pedro de Arivaca, stating that that of the Cocospera was not transmitted, because it could not be found in the office; but there was found in

the book of *toma de razon* an entry in 1833, which was copied by the treasurer-general, stating that on the 14th day of August title of a grant of four *sitios* of land had been issued in favor of the natives of Cocospera and Dolores, which entry was signed by Milla. (R., 241.)

Following this is an unsigned statement, as follows: "Don Toribio takes with him the following *expedientes*, for which Don Eufemio Tapia must give receipt: Casita, Tumacácori, and Calabazas, Calabazas, Tumacácori, Arivac. (R., 241.)

It is apparent by the communication of February 10, 1857, that the book of *toma de razon*, containing the entry of the Cocospera grant in 1833, existed in the archives; this is the same book that existed in the archives and is now there. It is clear from the evidence that the *expedientes* of the Tumacácori and Calabazas grant of 1807 and 1844 were not in the archives on July 26, 1855, and were not included in the list made up at that time by the treasurer-general for the use of the agent of the national government, Florencio Monteverde. (See Official Report on the Condition of the Archives, etc., by Special Agents Tipton and Flipper, pp. 2-3.) It is also quite clear that none of these instruments are in the archives now; that none of the documents relating to the grant to the *pueblo* of Tumacácori in 1807 were in the archives in April, 1844; that no note or memorandum of the issuance of this latter grant was made in the book of *toma de razon*.

Although the correspondence of 1857, before referred to, may have some tendency to show the existence in the

archives at that time of the *expedientes* in the Tumacácori and Calabazas grant, yet it is not sufficient to meet the requirements of the sixth article of the treaty of Mesilla. Considering all the evidence in relation to the record of this grant, it seems clear that the importance of its record was not understood until some time subsequent to the treaty of 1853 (Gadsden purchase), and it is contended on behalf of the United States that the same was not duly recorded in the archives of Mexico prior to the 25th day of September, 1853.

It is contended by appellants that although the book of *toma de razon* for the years 1831 to 1849 exists, yet as there are no entries of the issuance of titles for the year 1844, and as there is other evidence on file in the archives of the issuance of such titles, there must have been another book for that year, or this book was afterwards made up of what were originally loose leaves, and that those for the year 1844 were omitted and have been lost or destroyed. The claim of the existence of archive evidence that titles were issued in the year 1844 is incorrect.

Mr. Rochin compiled a catalogue in 1889. We have examined the same and find that although there are thirteen instruments in the archives showing some proceedings in 1844, still in no instance do they show the conclusion of the proceedings and issuance of title in that year so as to entitle the same to be entered in the book of *toma de razon*. The instruments showing some steps taken in 1844 are as follows:

Bacochibampo.—A house, lot, and three water-raising machines belonging to the nation "adjudicated" in 1844

to Antonio Bustamante, inside of the municipality of Guaymas. (Rochin's Catalogue, p. 14.)

Bisam.—Denounced in 1844. Title issued in 1846. (*Ibid.*, 16.)

Cieneguila.—Survey for *demasias* made in 1844, order for title to issue, but no evidence that it was issued. Owner, Francisco Alexandro Aguilar. (*Ibid.*, 25.)

Chiltipines.—Denounced in 1844. Title issued in 1847. (*Ibid.*, 26.)

Candelaria.—Suit started in 1844 between two parties over title issued in 1841. (*Ibid.*, 29.)

Moradillas.—Denounced in 1844. Adjudicated in 1845. No *Toma de Razon*. (*Ibid.*, 61.)

Pilares.—Denounced in 1844. Does not appear that title was issued. (*Ibid.*, 75.)

San Antonio.—*Demasias* denounced in 1844. No evidence that title was issued. (*Ibid.*, 115.)

S. Francisco del Gito.—Denounced in 1844. Surveyed in 1846. No evidence of issuance of title. (*Ibid.*, 116.)

Santa Rosa.—*Expediente* made up in 1844. Does not appear that title was issued. (*Ibid.*, 117.)

In regard to sale of temporalities in *pueblo* of Seris, 1844. (*Ibid.*, 117.)

S. Jose de las Taraises.—Denounced in 1844. No evidence that title was issued. (*Ibid.*, 127.)

Tetacomriate.—Denounced in 1844. Adjudicated in 1845. No evidence of issuance of title. (*Ibid.*, 147.)

POWER.

POWER TO SELL OR DISPOSE OF THE LANDS OF THE NATION, WHETHER TEMPORALITIES OR VACANT PUBLIC LANDS, WAS CONFERRED ALONE UPON THE BOARD OF SALES.

In conferring jurisdiction upon the judicial branch of the Government to pass upon the question of the obligations assumed by the United States under the treaties of Guadalupe Hidalgo and Mesilla (Gadsden purchase), Congress prescribed the rules and limitations under which this power was to be exercised. Section 13 of the act creating the Court of Private Land Claims provided:

First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico or from any of the States of the Republic of Mexico having lawful authority to make grants of land, etc.

It is to be observed that the form and recitals contained in this *titulo* do not agree with those we have had occasion to examine. It purports to have been made upon the motion of Ignacio Lopez, treasurer of the department of Sonora. In the preamble and granting clause it is stated that under authority of the decree of February 10, 1842, which provided for the sale, on account of the critical condition of the treasury, of the properties belonging to the department of temporalities, of which class were the farming lands and lands for the breeding of horses and cattle, respectively, of the four leagues of the depopulated town of Tumacácori and the two *sitios* of the stock farm of the same, the areas, boundaries, and coterminous tracts of which were stated in the proceedings of survey executed in the year 1807, and having

obtained information in relation thereto, said farming and grazing lands were valued at the sum of \$500, as provided in article 2 of the said decree of February 10, 1842.

It is contended on behalf of the Government that these lands were not temporalities of the church.

"*Temporalidades*" is defined in the Spanish Dictionary of Carlos de Ochoa as—

Aggregate of proceeds, and any other profane or worldly things ecclesiastics receive from their benefices or prebends.

Escriche defines the word as—

Proceeds, revenues, or any other profane things ecclesiastics receive from their benefices and prebends, and of which it is customary to deprive them when they contravene the laws; as, for instance, when they authorize the marriage of a minor who has not obtained the consent of his elders.

The Dictionary of the Spanish Academy defines it: "Proceeds or any profane thing which ecclesiastics receive from their benefices or prebends."

The Tribunal of the Inquisition was abolished by decree of the Cortes of February 22, 1813. (Comp. Laws, Vol. I, p. 399, No. 109, by Dublan and Lozano, 1876.)

The Company of Jesus or Order of Jesuits was suppressed by decree of the Cortes of Aug. 17, 1820. (*Ibid*, p. 522, No. 223).

Monastic orders were suppressed and the regular orders reformed by decree of the Cortes of October 1, 1820 (Reynolds, 90), article 23 of which provides:

All the movable and immovable property of the monasteries, convents, and colleges that are now

suppressed, or that may be suppressed hereafter,
* * * are applied to the public credit.

These properties are the temporalities referred to in all subsequent laws on that subject.

The order of the Sovereign Provincial Board of Government, issued on December 18, 1821 (*Ibid.*, 97), provided that the temporalities of the hospitals of the suppressed religious bodies be delivered to the common councils, which shows the relation of this order to the decree of October 1, 1820 (*supra*).

By decree of April 16, 1834, the missions of the republic were secularized, and it became the duty of the governors of the States to define their boundaries. (Reynolds, 185.) This decree shows that the missions were not suppressed, nor was any of the property owned by them to be included within the forfeiture to the government of the temporalities of the church. Article 20 of the decree of February 21, 1820 (*Ibid.*, 93), shows that the missions were not suppressed, but merely secularized.

On May 10, 1829, the department of the treasury ordered that "the property in which consist the funds of the temporalities of the ex-Jesuits and monastics and the rural and urban estates (*fincas*) belonging to the inquisition" be sold at public sale to the best and highest bidder. (Comp. Laws, Vol. II, p. 108, No. 639.) Some consolation is sought from this law, because the same must have been promulgated on account of the various commissaries having rented the public properties belonging to the temporalities. The jurisdiction of the commissaries over these lands in no way indicates their powers over the *vacant lands* that were not temporalities.

On May 31, 1829, the commissariat-general of Mexico published a "list of the urban and rural estates (*finca*s) relating to the temporalities of the ex-Jesuits and suppressed monastics, with a statement of their values, the burdens they carry, and annual revenue." (*Ibid*, p. 117, No. 652.) In this list there is but one property situated in the State of the west, and that is the Hacienda de Masocari and its ranches, near the village of Sinaloa, in what is now the state of Sinaloa. Its value was placed at ten thousand dollars.

The next law we are able to find relating to temporalities is the decree of February 10, 1842, under which the lands involved in this case purport to have been sold in 1844 by the treasurer of the department of Sonora. The decree of President Santa Anna of September 19, 1842 (Reynolds, 241), recognized the burdens existing on rural or urban property of the temporalities, and in order to carry out the same a communication was sent by the president to the governors of the various departments on February 28, 1843 (*Ibid.*, 242), wherein it is directed that the common councils or town corporations should place all temporalities at the disposition of the office of the auditor of temporalities, a bureau of the general treasury department, and that reports should be made to said general treasury, and that there should be included property which had been set aside for the purpose of public beneficence in order that the treasury might make the classification of that which had been set aside therefor, to avoid the fraudulent disposition that might be made of temporal property, all of which matters belonged to the supreme government.

The foregoing review of the laws relating to temporalities covers all that were issued between 1813 and 1844, the date at which Lopez purported to have issued the title in this case.

With reference to the law of February 10, 1842 (*supra*), alleged to be authority for action by Lopez, it appears that if the *fundo legal* and the *estancia* of Tumacácori were temporalities, that law was not complied with in making the sale. Article 1 thereof provides that the boards of sale in the several departments will proceed to sell at public auction to the highest bidder the properties (*fincas*) situated therein that pertain to the department of temporalities. No bid was to be admitted that did not cover the value of the property, the same to be computed from the amount of the leases, which should be construed as the interest thereon at the rate of five per cent. It nowhere appears in any of these laws relating to the sale of temporalities that the value thereof should in any manner qualify or affect the official body authorized to make the sale.

Mr. Lopez ignored and violated the provisions of the law of February 10, 1842, in this, that the land was not sold by the board of sales, but by him; and he cited as authority therefor article 73 of the law of April 17, 1837, which did not authorize him as departmental treasurer to sell and pass the title to the vacant public lands whether they were valued at less or more than five hundred dollars. There is nothing in the law of 1842, pertaining to the sale of the temporalities, indicating that the mode of procedure should be the same as that contained in

the law of April 17, 1837, but it was a law general in its character, directing the boards of sale to sell all the properties of the class designated therein. It is clear that neither the law of April 17, 1837, nor that of February 10, 1842, authorized the treasurer of the department to sell any of the lands of the republic or under its control, whether they were public lands or those that fell within the class designated as temporalities of the church, and this grant is precluded from confirmation under the provisions of section 13 of the act creating the Court of Private Land Claims (*supra*), because the title thereto has not been lawfully and regularly derived from either Spain, or Mexico or any of the States thereof having lawful authority to dispose of the vacant public lands.

It is clear from the recitals in the papers themselves that Lopez knew he had no authority to make the sale of the lands if they were public lands of the nation, and he sought to avoid this very difficulty by arbitrarily classifying them as temporalities!

The lands attempted to be sold formerly belonged to the town of Tumacácori, an Indian village or *pueblo*, which, as fully appears, had been abandoned for a number of years, probably since about 1820. Upon its abandonment as a *pueblo* the lands which had been assigned to the community as a body returned to the great body of the public domain, the *jus disponendi* of which always remained in the nation, and the only laws applicable to the disposition of the whole or any portion of it were the laws of the nation in relation to the disposition of its vacant public lands. It is not contended by the claimant

that this sale in any manner conformed to the requirements of those laws or was made under them, which laws have been quite fully discussed in a large number of other cases before this court from the Court of Private Land Claims.

The law of February 10, 1842, did not prescribe any regulations for conducting the same, except that the sale should be made by the "board of sales in the several departments" (Reynolds, 239), nor did it provide that the value of the property should in any way change the membership of the board or dispense with its action as such. This body must have had an official existence at the date of the issuance of the foregoing law, and it seems to follow that the action of Lopez, if taken at the time it purports, can not be sustained as being lawful or regular. With this law recited as authority, it is at least questionable whether Lopez may not be charged with bad faith in failing to have the board of sales perform its duty instead of assuming to himself all the powers and authority in the matter.

It is inferentially contended for the appellants that the treasurer of the department could make the sale without the participation of the board of sale, because, by article 73 of the law of April 17, 1837, sales made on account of the treasury exceeding five hundred dollars, "shall be made necessarily by the board of sales." (Ibid., 225.) Hence it must follow that all sales for five hundred dollars or less could be made by the departmental treasurer. This position ignores the mandatory provisions of the law of February 10, 1842, and, if seriously insisted upon, must

result in the abandonment of the theory that the lands were *temporalities*; therefore, the right to confirmation must fail, as it is apparent that the laws in force regulating the disposition of the vacant public lands were in no way attempted to be complied with.

The action of Lopez is attempted to be justified by the law of December 16, 1841. (Reynolds, 238.) This law went into operation on January 1, 1842, only a month and ten days prior to the law ordering the sale by the board of sales in the several departments of the properties (*fincas*) situated therein that pertained to the department of temporalities. It did not abolish the board created by article 73 of the law of April 17, 1837, nor did it modify or change a single power of the same. The office of superior chief of the treasury, created by the latter law, was abolished, and the duties theretofore performed by those officers in the various departments were conferred upon the various departmental treasurers, except such as were assigned to the commandant-general. So far as this litigation is concerned the only effect of this law was to drop out of the board of sale the superior chief of the treasury and impose his duties upon the departmental treasurers; the board continued in existence and could have acted in this instance had Mr. Lopez sought to comply with either the law of April 17, 1837, or February 10, 1842.

The various laws and regulations for sales and purchases that were to be made on account of the public treasury of the nation were briefed and referred to in the court below, and, as all of them have heretofore been

fully discussed in other cases, we content ourselves with a simple summary or index of them for the convenience of the court, with the observation that they disclose a complete, minute, and guarded system, and the radical variances therefrom and violations of their express requirements can hardly be justified upon the idea of good faith.

LAW OF AUGUST 4, 1824 (REYNOLDS, 118).

Classification of general and special revenues.

It has been contended on behalf of the Government that the vacant public lands were not intended to be the object of this law, as the policy of the nation in relation to the same was within a few days declared by the

LAW OF AUGUST 18, 1824 (Ibid., 121).

Colonization law.

The objects and purposes of the nation in respect of its public lands were declared and defined by articles 2 and 3 to be for colonization.

Commencing with the law of September 21, 1824, was the creation of a system, changed from time to time, but always consistent, for the organization and execution of the revenue system of the nation.

LAW OF SEPTEMBER 21, 1824 (Ibid., 123).

Created the office of commissary-general and defined his powers and duties.

It is not believed by counsel for the Government that this law in any way contemplated any jurisdiction over

the vacant public lands, no matter where situate, and if lands can be included within its scope, they were only such as had been appropriated for temporalities and public and governmental purposes, and not the vacant public lands which seem at that time to have been reserved by the law of August 18, 1824, for colonization, either by the states or nation.

LAW OF JANUARY 26, 1831 (Ibid, 151).

Created a general department of revenues.

This department seems to have been located at the national capital and it assumed jurisdiction over the commissariats located in the various States and Territories. Article 13 provided:

The proceeds of national property shall be collected by commissioners under the immediate direction of the general department.

LAW OF MAY 21, 1831 (Ibid., 153).

Created commissariats and commissaries-general.

This bureau, located in the various States and Territories, was in all respects subject to the treasury general of the nation established by the law of January 26, 1831.

REGULATIONS OF JULY 7, 1831 (Ibid., 155).

These regulations were issued under the provisions of article 1 of the law of January 26, 1831.

The general department of revenue, established on January 26, was divided into three sections, under whose charge were placed the different branches of the

treasury. The chief of the first section was first auditor, with jurisdiction of national property. Article 10 provided that the general department should take an exact account of the number, location, value, condition, and present method of administration of all the property and estates of the nation, and should see to the thorough collection of the proceeds thereof.

REGULATIONS OF JULY 20, 1831 (*Ibid.*, 157).

These regulations were additional to those of July 7, and it will be noted that article 126 provided that "all purchases, sales, and contracts made on account of the treasury, whatever be their purpose, shall be made by the commissaries-general, sitting as boards of sale." This board was to be convened only upon the order of the Supreme Government, etc. These regulations furnished a very complete system for the administration of the revenues of the nation, and is the first instance in which the purchases and sales on behalf of the government were required to be conducted by a board of sales.

The political situation of the country had assumed such a state that a change in the form of government commenced in 1835.

LAW OF OCTOBER 3, 1835 (*Ibid.*, 195).

The state legislatures (congresses) were abolished and departmental councils were established.

BASES FOR THE NEW CONSTITUTION, OCTOBER 23, 1835 (*Ibid.*, 201).

These bases divided the country into departments which were to be given in detail in the constitution.

CONSTITUTION OF 1836, DECEMBER 29, 1836 (Ibid., 209).—
LAW OF DECEMBER 30, 1836 (Ibid., 209).

This law made the division of the country into departments. No distinction was made between those subdivisions which had been States and those which had been Territories. The financial condition of the country had evidently become alarming and its credit required strengthening.

LAW OF JANUARY 17, 1837 (Ibid., 210).

Established a national bank for the redemption of copper coin.

By article 3 there was adjudicated to the bank for a redemption fund: "First, all real property of the nation that exists in all the territory of the republic." (This law was repealed December 6, 1841.)

LAW OF APRIL 4, 1837 (Ibid., 222).

Colonization of the lands of the republic.

This law, in our opinion, is the first direct attempt or intention on the part of the national government to permit its vacant public domain to become a part of its revenue system, and was evidently brought about by financial distress.

LAW OF APRIL 12, 1839 (Ibid., 223).

This created what is known as a national consolidated fund, and was practically a mortgage of one hundred million acres of public lands in departments of the Californias, Chihuahua, New Mexico, Sonora, and Texas to secure the payment of the national debt.

On September 15, 1837 (Reynolds, 227), a convention was entered into between the nation and the English bondholders stipulating that the deferred bonds should be received at any time in payment of lands that were found unoccupied in the departments of Texas, Chihuahua, New Mexico, Sonora, and California, at the option of the purchasers, at the rate of four acres of land to the pound sterling. This convention was ratified on June 1, 1839. (Ibid., 232). Prior to that time, however, by the

LAW OF APRIL 17, 1837 (Ibid., 224),

the department of revenue under the new form of government was established, and it is to this law that reference is made in the title papers in this case and particularly to article 73. By this law it is clear the principal officer of the general treasury in each department was designated as the superior chief of the treasury, and on him was conferred the powers and duties formerly exercised by the commissary-general. All of the various officers connected with the department of revenues were subordinate to these superior chiefs. The court below, in concluding its opinion by Chief Justice Reed, seems to cover the ground:

From these various provisions it is manifest that the power to make sales or grants of national lands situated in the States and departments was vested in the treasury department of the nation. But it is equally clear that the exercise of that power was governed by strict rules and regulations emanating either from the department or the chief executive of the nation; and we look in vain for any rule or

regulation which by any possible construction conferred that power upon the officer who in this case attempted to exercise it. It was not conferred by any express provision, nor is it to be inferred from any power that was conferred.

On the boards of sale created under the decree of July 20, 1831, and that of April 17, 1837, alone was this power conferred, and the strict rules and regulations enacted for the government of those boards in the conduct of such sales precludes the idea that any single officer, although a member of the board, could exercise the power. (R., 332-333.)

We believe from all the evidence in the case appellants have failed to bring their claim within the terms of the treaty of 1853 or the law conferring jurisdiction upon the judicial branch of the government.

Respectfully submitted.

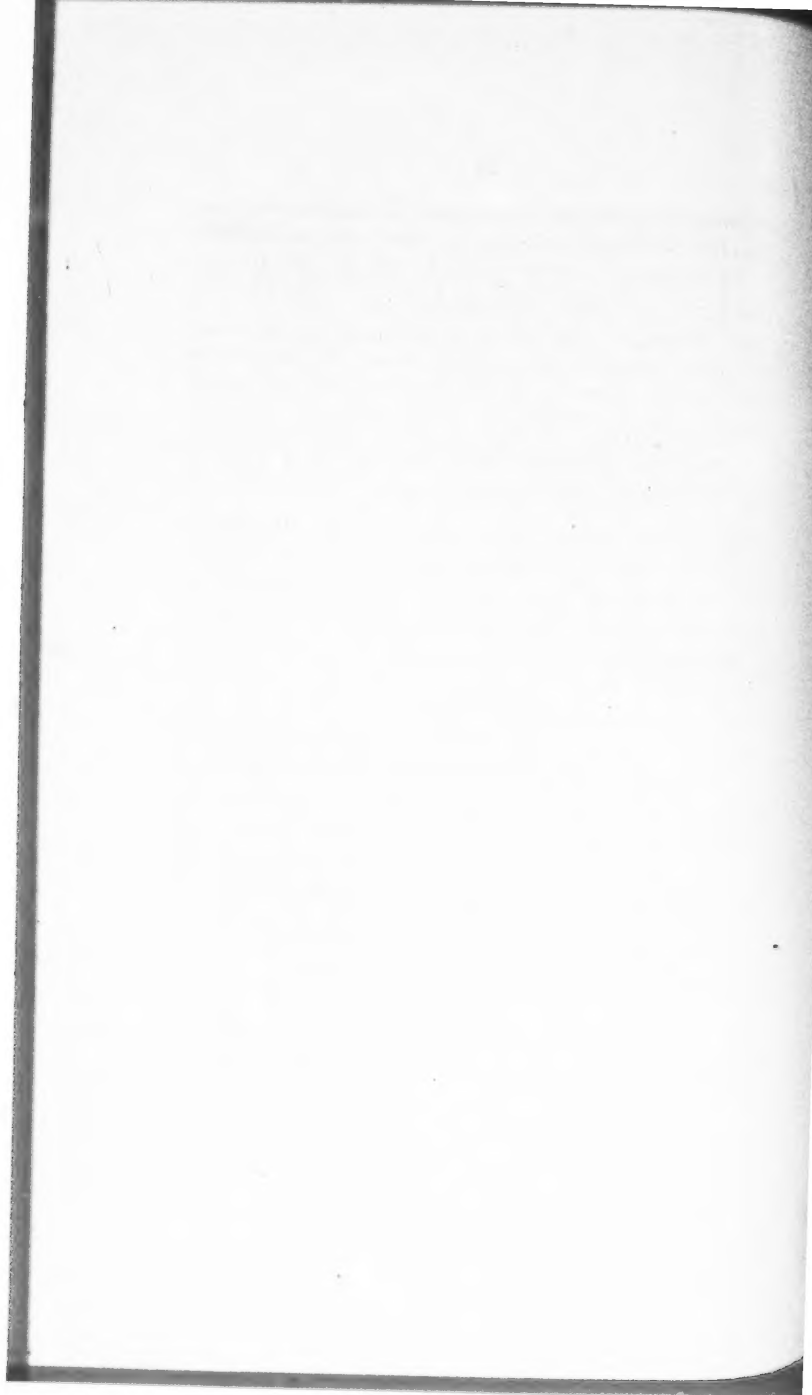
JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.





No. 119.

MAR 22 1898
JAMES H. MCKENNEY,
CLERK

By *of* Atty. Gen.^o (Reynolds) for
U.S. (on mo.)

Filed Mar. 22, 1898.

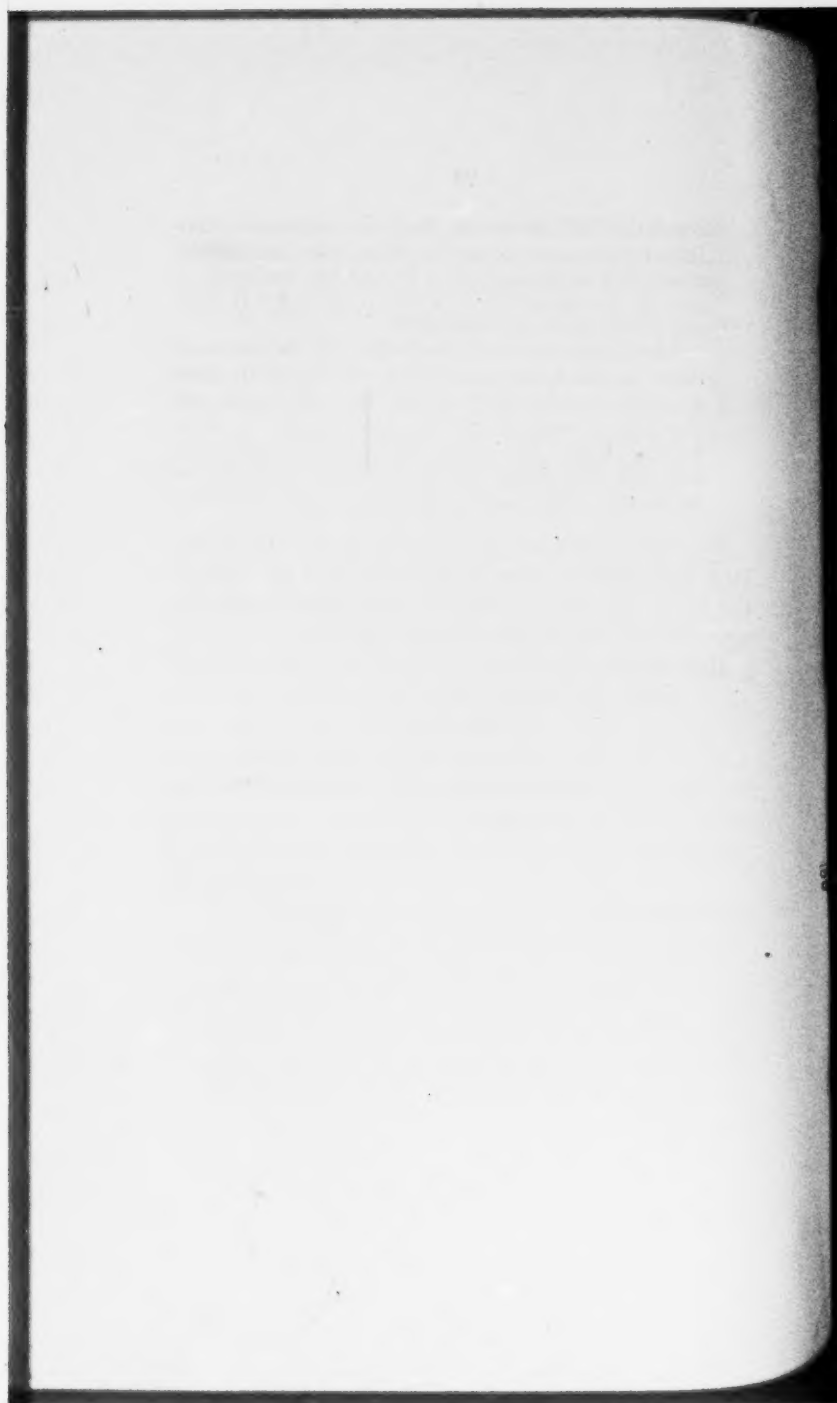
In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM FAXON, JR., TRUSTEE, ET AL.,
appellants,
v.
THE UNITED STATES ET AL. } No. 119.

APPEAL FROM THE COURT OF PRIVATE LAND
CLAIMS.

BRIEF IN OPPOSITION TO MOTION TO FILE
ADDITIONAL EVIDENCE.



1918
By

Case No. 100

In the District Court of the United States

County of [illegible] State of [illegible]

WILLIAM FARMER, JR., Plaintiff,

vs.

THE [illegible] COMPANY, Defendant.

VERIFICATION OF PETITION FOR WRIT OF HABEAS CORPUS

**BRIEF IN OPPOSITION TO MOTION TO FILE
ADDITIONAL EVIDENCE**

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM FAXON, JR., TRUSTEE, ET AL., appellants, v. THE UNITED STATES ET AL.	} No. 119.
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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF IN OPPOSITION TO MOTION TO FILE ADDITIONAL EVIDENCE.

The power of this court to amend the record of the proceedings below under the act creating the Court of Private Land Claims, or cause additional testimony to be taken, was considered in the case of *United States v. Coe*, 155 U. S., 76, 84, wherein Mr. Chief Justice Fuller, for the court, said :

Under what circumstances and to what extent the power to amend the record of the proceedings below under this act, or to cause additional testimony to be taken, was intended to be exercised, we are not now

called upon to consider. The statute is not mandatory, but empowers the court to direct further proofs and to amend the record if in its judgment the case demands its interposition to that effect, and, as the question is one of power merely, and not properly arising for determination on this motion, we need not prolong these observations.

It is submitted that no such case is presented as "demands its interposition" and the exercise of such power.

In the same case it is said (p. 83):

The remedy by appeal, in its original sense, was confined to causes in equity, ecclesiastical, and admiralty jurisdiction. Undoubtedly appellate courts, proceeding according to the course of the civil law, may allow parties to introduce new allegations and further proofs, and such has been the settled practice of the ecclesiastical courts in England and of the admiralty courts in this country. Nevertheless, orders allowing this to be done are not granted as a matter of course, but made with extreme caution, and only on satisfactory grounds.

Appellant's motion in no way has a tendency to throw any light upon this case, and the report, the reliability of which is attacked, is not only the report of Special Agent Henry O. Flipper, but is the official report also of Special Agent Will M. Tipton. Whatever criticism counsel may see proper to make as to the credibility of Mr. Flipper on account of unfortunate occurrences in his past life, a sense of justice demanded that the court at the time should have understood that the report questioned was also the report of Special Agent Will M. Tipton. The far-reaching effect apparently sought by this insufficient presentation of the facts, without stating that it was a

joint report and without seeking to attack the credibility of Special Agent Tipton, who is as much responsible for the statement which counsel criticises as is Mr. Flipper, would seem to call for the exercise of that "extreme caution" in granting the motion and also to not be without its influence in determining whether there are "satisfactory grounds" upon which an order will be made responsive to the motion.

The motion states, "The purpose of this offer is to impeach the credibility of said Henry O. Flipper as a witness, for the reason, among others, that a certain report on the condition of the archives of Mexico was made BY HIM since the trial of this case, and has been filed on the part of the Government as evidence in this case without the consent, either oral or written, of this appellant or his counsel, and this appellant has had no opportunity, through counsel or otherwise, to cross-examine said Henry O. Flipper upon any of the facts recited in said report, and especially upon one recital contained therein at page 101 thereof, to the effect that no evidence of any kind appears in said archives of Mexico in relation to the grant which is the subject-matter of this suit, and for the reason that it is contended by this appellant that said recital in said *report by said Henry O. Flipper* is not true."

I take it that the report referred to is the official report of Special Agents Tipton and Flipper, which was filed generally with this court, and that the recital referred to as on page 101 is as follows :

163. Tumacácori, Calabazas y Huevabi. (Arizona.)

There is absolutely no record of this grant of any kind in the archives.

I attach hereto, as Exhibits A and B, translations of two certificates made by Mr. Victor Aguilar, treasurer-general of Sonora, in 1894. The original certificates in Spanish are among the files in my office at Santa Fe, N. Mex., and have been telegraphed for, and the same have now been mailed by special agents there to the clerk of this court.

I suggest to the court that the statement, the veracity of which is denied, is a statement embodied in the report compiled and signed by Special Agents Tipton and Flipper as a result of their joint examination of the archives and the certificates of Victor Aguilar, treasurer-general of Sonora, hereinabove referred to.

In all my connection with this litigation, I have never found an instance where Special Agent Tipton has been instructed to investigate and report upon a question of fact that his report could be criticised in the least as to its accuracy. This observation applies with equal force to Special Agent Flipper. The one feature that has made them so valuable and so strong is that in stating facts they have been scrupulously accurate and painstaking. I have on file in the office of the United States attorney for the Court of Private Land Claims at Santa Fe, N. Mex., two communications from counsel who has filed this motion, in which he commends this report and seeks a stipulation that this court might consider in evidence an additional report as to the condition of the book called *Toma de Razon*, made jointly by the same special agents, Will M. Tipton and Henry O. Flipper.

This additional report is entitled to no more credit than their original report. In one breath counsel seeks to stipulate into the record the work of Special Agents Tipton and Flipper, and in the next breath he denounces it as unreliable and untruthful. I call to the attention of the court this additional report, stipulated into the record at the instance of appellant's counsel and at his instance alone, which has been printed and is on file in this case, entitled "*Evidence introduced by stipulation.*" While the rule that one may not impeach his own witness may not have technical application, still, in my judgment, its spirit should not be without influence in determining whether this motion shall be granted.

On page 127 of the voluminous brief filed by counsel appears this statement:

Mr. Flipper was present in the Court of Private Land Claims during the trial of this case and heard the testimony of Mr. Rochin, and examined the documents which appear in the record between pages 238 and 239 and satisfied himself that the handwriting of said documents was that of clerks, who were in the Treasury Department at the date upon which those papers purport to have been made, and yet he makes the unqualified statement that "there is absolutely no record of this grant of any kind in the archives." The recklessness of such statements by Mr. Flipper is evidenced by the fact, that at no time did he ever have free and unrestrained access to all, or even to a considerable part, of the records relating to land grants in said archives at Hermosillo, etc.

The special attention of the court is directed to the statements made on pages 126 and 127 of that brief, and

also to the date of the instruments referred to (Rec., p. 238-239), which counsel makes the basis for his challenge of the integrity of their report as well as the subsequent work of these special agents. These instruments have been noticed in the Government's brief filed in this case, pages 60-64, and their dates seem sufficient to justify anyone in stating that there was *absolutely no record of the existence of this grant* in the archives. (*Vide Exhibits A and B herewith.*)

Aside from the objections to this motion heretofore stated, in justice to this court and to myself as the representative of the Government in the Court of Private Land Claims and in this court, I deem it proper to state that the matter of court-martial of Mr. Flipper was known to me prior to his employment as special agent of the Department of Justice and Spanish expert. Shortly after his appointment as such, the matter was brought to the attention of the Attorney-General (Mr. Olney) by way of charges made by one Bruce, which contained an affidavit or statement from an army officer—his name is not now recalled nor is it material—that Mr. Flipper had been found guilty by court-martial of conduct unbecoming an officer and a gentleman in making misstatements to his commanding officer and the sentence of dismissal from the Army approved. I suspended Mr. Flipper until I could give the matter of these charges full investigation and report to the Attorney-General such recommendations as might be deemed proper in the premises.

After the investigation was made, and having before that time had occasion to observe Mr. Flipper very carefully in his work in the Nogales grant (*Ainsa v. U. S.*, 161

U. S., 208), at which time he had not been employed by the Government, as well as careful inquiry into his private and public character in the community in which he had lived since leaving the Army, I reported to the Attorney-General that after careful and full examination into and consideration of all these matters I was satisfied that Mr. Flipper was the best equipped, most efficient, competent, reliable, and trustworthy man to perform the duties necessary to be performed on behalf of the Government in order that its interests might be conscientiously protected in this private land claim litigation in Arizona, and upon that report I was authorized by the Attorney-General to continue Mr. Flipper in the service of the Government.

Since then he has been constantly under my direction, and observation of his conduct, his work, the efficiency of it as well as its great volume, has only more firmly convinced me, as well as the community in which he has resided since leaving the Army, that he has been more sinned against than sinning.

The excitement and public notoriety occasioned by the private land claim litigation in Arizona has brought upon everyone connected with it on behalf of the Government the critical scrutinizing eyes of various adverse interests, as well as the general public, and this is the first attack upon the integrity of the work of anyone in the Government's interest; and every fact upon which this attack is based has been publicly known ever since a time before the inception of this litigation.

My investigations as to Mr. Flipper, and my subsequent observations of him, as well as my associations with

the people of Arizona, justify me in stating that no successful attack can be made upon his honesty, his integrity, and his reliability, and this is borne out by the general respect and esteem accorded him in the community where he lives and where these land grants are situated.

Having little in common with his race by reason of his talents, attainments, and education; sensitive in the extreme and fully understanding the social lines that the conventionalities of society have drawn against him; compelled by this ostracism to seek his books for companionship and recreation, he has equipped himself both in head and heart so as to obtain the respect and confidence of scholars and men of learning who know him or have examined his works. Even the litigants in these cases, with interests adverse to the Government, have very largely availed themselves of the work that this man has performed in behalf of the Government, and his labors in the office of the United States attorney for the Court of Private Land Claims for the past five years have been subjected to careful, critical, and rigid scrutiny, and that his duty has been accurately, conscientiously, and faithfully performed has never been questioned till now. Five judges, composing the Court of Private Land Claims, who have observed him carefully and closely since his original employment, will unite in commending his work and the integrity of it and the man.

In an official and expert capacity, by the side of Special Agent Will M. Tipton, who is recognized all over this country as the most competent Spanish scholar and expert of American birth, Special Agent Flipper—whom it is now sought to discredit by reason of a

court-martial many years ago, and under circumstances never satisfactory to the army officers who had occasion to know him in the performance of his duties on the frontier, and many of whom he served under—has made for himself a name and a credit, as a private citizen and a Government official, of which any man might well be proud. The record of this court-martial shows that he was convicted on a bare technicality, without culpability attaching thereto. It is within my personal knowledge that he has to-day the recognized friendship of many officers of the Army who served with him.

As a special agent, his work is imprinted in the records of this court in every Arizona case from the court below, and he has translated almost every law from the original Spanish which is to be found in the various books and briefs filed in these cases by the Government. The accuracy of these translations, even the coloring of a word, has never been questioned by any Spanish scholar of standing, and, as is known to this court, the improper coloring of a word in translation might lend a meaning very much different from that intended; yet all of his translations, investigations, and reports have stood the test of adverse and rigorous investigation.

Had it been sought to attack the credibility of this man in any of these cases on the trials below, it was well known that such an attack could have been successfully and easily overcome by the testimony of citizens of his own community, and I submit that the purpose of this motion should fail of its accomplishment here, just as it would have failed in the court below.

As to the employment of Mr. Flipper by the Government, I am responsible for it, and from the time of his appointment up to the present time I have been and am exceedingly glad that I have had his aid, assistance, and support in this trying, difficult, and perplexing litigation. In every Arizona grant, save one, the work of this man as a scholar, a translator, a surveyor, an engineer, an expert, a student of Spanish and Mexican law, and as an ordinary witness has been under investigation, and during his whole employment of over five years, after counsel and claimants availing themselves of the result of his labor, criticising and examining his work, and relying upon it in many instances (vide, page 10, Additional Brief of appellant in this case, filed March 19, 1898), making no challenge heretofore as to the vast product of his expert skill and ability that is now in cold type before this court interspersed throughout the records of the Arizona cases in this court and the court below, this is the first and only time it has ever been questioned.

After this long period of careful and serious observation in an official capacity of his ability and as applied to the performance of his labors, it has become my duty to appreciate it and my pleasure to commend it without a single reservation.

I respectfully submit that the motion to present additional evidence, as submitted by counsel, should be denied.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

EXHIBIT A.

I, Victor Aguilar, treasurer-general of the State of Sonora, Republic of Mexico,

Certify that there does not exist in the archives of this office any record of the sale the intendant and treasurer-general, Don Antonio Lopez, made in the year 1844 to Don Francisco Alejandro Aguilar of the lands of the Tumacácori and stock farm of the same at the places Guebavi, Potrero, Cerro de San Cayetano, and Calabazas.

And at the request of the commissioner of the American Government, Mr. H. O. Flipper, I give the present certificate in the city of Hermosillo on the twelfth day of the month of March, eighteen hundred and ninety-four.

V. AGUILAR.

EXHIBIT B.

I, Victor Aguilar, treasurer-general of the State of Sonora, Republic of Mexico,

Certify: That the original title or matrix of the town site (fundo) and stock farm (estancia) of the town of Tumacácori, issued by the intendant in the year 1807, does not exist in the archives of this office.

And at the request of the commissioner of the American Government, Mr. H. O. Flipper, I give the present certificate, in the city of Hermosillo, on the twelfth day of the month of March, eighteen hundred and ninety-four,

V. AGUILAR.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

WILLIAM FAXON, JR., TRUSTEE, ET AL.,	} No. 430.
appellants,	
v.	
THE UNITED STATES AND GEORGE W.	
Atkinson et al.	

MOTION TO ADVANCE.

Now comes the Solicitor-General and moves on behalf of the United States that the above-entitled cause be advanced and set down for hearing on such day as to the court may seem proper.

The decree appealed from was rendered in the Court of Private Land Claims at the March Term, 1895, Arizona District.

It appears from the record that three several petitions were filed, to wit: By William Faxon, trustee, et al., D. G. Astiazaran et al., and George Hill Howard against the United States et al., the petitioners in each claiming to be the owners in fee simple, holders and possessors of

a certain tract of land commonly known as the Tumacacori Calabasas and Huebabi grant or private land claim, lying and being in the county of Pima and Territory of Arizona.

These causes or proceedings were consolidated and heard together in the Court of Private Land Claims. (Rec., 24.)

The decree appealed from (Rec., 328) held that the claims set up and asserted in the several petitions were—

Neither of them sustained by sufficient proof, and that the title to said grant so claimed and asserted as having been originally granted by the Republic of Mexico, through Ignacio Lopez, the treasurer-general of the Department of Sonora, to one Francisco Alejandro Aguilar and bearing date the 19th day of April, 1844, is null and void and not such a title as the United States is bound to recognize and confirm.

It was "therefore, adjudged, ordered, and decreed that the claim to the property known as * * * be, and the same is hereby, rejected, and said petitions are dismissed."

The Secretary of the Interior advises the Attorney-General that on the land involved in the case known as the Tumacacori, Calabasas, and Huebabi grants, and situated in Pima County, southern Arizona, there are large quantities of valuable timber; that for some time past timber has been taken therefrom, and that this is still going on; that no court in the Territory, save that of Private Land Claims, has any jurisdiction over an

unconfirmed Mexican land grant, and it has been impossible to punish or stop the trespass. * * * As the Government, however, is interested in the preservation of timber on all lands within its boundaries, and the decision of the court in favor of the United States would place the land within the public domain, I would, if no motion has heretofore been made to the court, recommend the question of stipulation to your favorable consideration.

The object, then, of the motion on behalf of the United States to advance this cause on the docket is to secure an early decision and, if the decree below is affirmed, secure thereby the United States from further loss from the destruction of timber on this portion of the public domain.

HOLMES CONRAD,
Solicitor-General.

Statement of the Case.

FAXON v. UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 119. Argued March 18, 1898. — Decided May 31, 1898.

In order to the confirmation of any claim, the Court of Private Land Claims, under the act of March 3, 1891, c. 539, 26 Stat. 854, creating that tribunal, must be satisfied not merely of the regularity in form of the proceedings, but that the official body or person, assuming to make the grant, was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified; and the same rule applies to this court on appeal.

The Court of Private Land Claims held, in this case, that if the lands which are the subject of controversy belonged to the class of temporalities, it was clear that the treasurer of the department had no power to make a sale by his sole authority, whether the value exceeded five hundred dollars or not; and if the lands did not belong to that class, nevertheless, there was the same want of power under the laws of Mexico in relation to the disposition of the public domain. This court, concurring with the Court of Private Land Claims, further holds that this is not a case in which the sale and grant can be treated as validated by presumption.

THREE separate petitions were filed in the Court of Private Land Claims for the confirmation of what was commonly called and known as the Tumacácori, Calabazas and Huebabi grant, situated in the valley of the Santa Cruz River, Pima County, Arizona, the petitioners in each claiming under the original grantee. The causes were consolidated and tried under the petition of William Faxon, Jr., trustee, and others. The petition alleged that the claimants were the owners in fee of the tract of land in question under and by virtue of a certain instrument in writing, dated April 19, 1844, "made and executed by the treasury department of Sonora in compliance with the law of the Mexican Congress of the 10th of February, 1842, providing for the denouncement and sale of abandoned pueblos," running to Don Francisco Alejo Aguilar, to whom said treasury department sold the tract April 18, 1844, for the sum of five hundred dollars.

That in the year 1806, the governor of the Indian pueblo

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of Tumacácori petitioned Don Alejo Garcia Conde, intendente of the province, etc., etc., to issue to the Indians of the pueblo a grant of lands for the "fundo legal" and also for the "estancia" of the pueblo to replace ancient title papers which had been lost or destroyed; that in accordance with that petition the lands mentioned were ordered to be surveyed, which was done, and the boundary monuments established, by Don Manuel de Leon, commandante of the presidio of Tubac; that on April 2, 1807, the said intendant Conde issued a royal patent or title to the Indians of the pueblo of Tumacácori for the lands, as set forth in the proceedings of the survey thereof and in the copy of the original expediente.

That under the law of the Mexican Congress of February 10, 1842, Don Francisco Aguilar, on April 18, 1844, became the owner by purchase, as before mentioned, "of the four square leagues of agricultural and grazing lands of the 'fundo legal' of the abandoned pueblo of Tumacácori and the sitios of the estancia (stock farm) of Calabazas, and the other places thereunder pertaining." It was averred that all the steps and proceedings in the matter of the grant and sale were regular, complete and legal and vested a complete and valid title in fee in the grantee; and that the grantee at the time went into actual possession, use and occupation of the grant and erected the proper monuments thereon, and that he and his legal representatives have continued ever since and until the present time in the actual possession, use and occupation of the same, and are now possessed and seized in fee thereof.

The United States answered alleging that the alleged sale to Aguilar was without warrant or authority of law and void; that, if these lands had been theretofore granted to the pueblo of Tumacácori, they were abandoned about 1820, and by virtue thereof became public lands; that the title to said property, if any passed in 1807, was purely usufructuary, and vested no estate, legal or equitable, in the said pueblo or mission, but that the same and the right of disposition were reserved to and remained in the national government.

The answer denied that Aguilar became the owner by purchase or otherwise of any lands included in the alleged grant

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of 1807 to the pueblo, or of any land of that mission or its dependencies; that the alleged grant was ever located and recorded as provided by the sixth article of the treaty of Mesilla (Gadsden purchase); that the original grantee or grantees were ever owners of the property as against the Republic of Mexico, or are now the owners thereof as against the United States or its grantees; that the grantee Aguilar, in the year of 1844, went into actual possession and occupation of the grant, and erected monuments thereon, or that he and his representatives have continued ever since in the actual possession, use and occupation of the same.

The answer averred that the proceedings for sale were never taken under the express order or approval of the general government, and never submitted to said general government for ratification or approval; that the lands claimed far exceeded those contained in the original survey; that the sale was by quantity and limited; and that the alleged grant was so indefinite and uncertain as to description as to carry no title to any land.

On the hearing the testimonios of the grants of 1807 and of 1844 were put in evidence. Evidence was adduced to the effect that Aguilar, the original grantee, never took or had possession of the lands; that he was the brother in law of Manuel Maria Gandara, who was the governor of Sonora in 1842, and in 1845 to 1853, except a few months; to whom Aguilar conveyed in 1856, and, more formally, in 1869; that Gandara was in possession in 1852, 1853, 1854 and 1855, through his herdsmen; and that, as contended by counsel for petitioner, the money for the purchase was furnished by Gandara, and Aguilar took the title as trustee for him. Apparently the *expedientes* were not in the archives, nor was there any note of the grant in the book of *toma de razon* for 1844.

A translation of the titulo of 1844 is given in the margin.¹

¹ Treasury of the Department of Sonora, 1844.

Title of sale, transfer and adjudication of agricultural lands which include the four leagues of the fundo legal of the deserted pueblo of Tumaácori and the two sitios of its estancia (stock ranch) of Calabazas and the other places thereto annexed, the same being situated in the jurisdiction

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The Court of Private Land Claims rejected the claim on the ground that the sale in question was void for want of power on the part of the officer attempting to make it.

of the District of San Ignacio, issued by the said departmental Treasury in compliance with the supreme decree of the 10th of February, 1842, in favor of Don Francisco Alejandro Aguilar, a resident of the port and village of San Fernando de Guaymas.

Second Seal.

Seal.

Four Dollars.

Eighteen hundred and forty-four and eighteen hundred and forty-five.

Ignacio Lopez, captain of cavalry retired to the infantry, honorary intendant of the army and treasurer of the Department of Sonora.

Whereas the supreme decree of February 10, 1842, provides for the sale, on account of the critical condition of the public treasury, of the properties pertaining to the department of temporalities, of which class are the farming lands and the lands for breeding cattle and horses respectively of the four leagues of the townsite of the depopulated town of Tumacácori and the two sitios of the stock farm of the same at the points of Huebabi, Potrero, Cerro de San Cayetano and Calabazas, whose areas, boundaries, monuments and coterminous tracts are stated in the corresponding proceedings of survey executed in the year 1807 by the commissioned surveyor, Don Manuel de Leon, veteran ensign and late commandant of the presidio of Tubac, according to the information obtained in relation thereto at the instance of this departmental Treasury, said temporal farming and grazing lands being valued in the sum of five hundred dollars, as provided in article 2d of the aforesaid supreme decree of February 10, 1842; and complying punctually therewith I have ordered the formation of the corresponding expediente by the Court of First Instance and of the Treasury of the District of San Ignacio, during which proclamations (pregones) no bidder appeared; therefore, and in compliance with article 73 of the law of April 17, 1837, as the sale in question on account of the national Treasury does not exceed five hundred dollars, this said Treasury proceeded to the public sale of the aforementioned lands of the depopulated Tumacácori and the lands of its stock farm, Calabazas, and other annexed points, all belonging to the department of temporalities, on the 16th, 17th and 18th of the current month of April, in solicitation of bidders, without there being any other than Don Francisco Alejandro Aguilar, a merchant and resident of this port and village of San Fernando de Guaymas, for said sum of five hundred dollars, the appraised value at which said temporalities have been sold, as appears from the third and last offer, which literally is as follows:

" Third Seal.

One dollar.

Years 1844 and 1845.

" In the port and village of San Fernando de Guaymas, on the eighteenth of April, eighteen hundred and forty-four, I, the undersigned, departmental Treasurer, being in the office of this Treasury under my charge, with my attendant witnesses, Don Jose Maria Mendoza and Don Vicente Irigoyen, in the absence of a Notary of the Treasury and of a Notary Public, in compli-

Counsel for Parties.

Mr. Francis J. Heney for appellant.

Mr. Special Assistant Matthew G. Reynolds for appellees.
Mr. Solicitor General was on his brief.

ance with the provisions of Article 73 of the law of April 17, 1837, since the price or value of the temporalities to which these proceedings relate do not exceed five hundred dollars, ordered that the third and last offer be made for the final sale of the temporal lands of Tumacacori and Calabazas referred to in this expediente and that to that end a proclamation be made to the public at the sound of the drum, as, in effect, the public crier, Florentino Baldizan, made in a high and clear voice, saying: 'The Treasury of the Department is going to sell, on account of the national Treasury and in accordance with the supreme decree of February 10, 1842, the agricultural lands and lands for raising cattle and horses which comprise the four leagues of the townsite of the depopulated town of Tumacacori and the two sitios of the depopulated stock farm of the same at the points of Huebabi, Potrero, Cerro de San Cayetano and Calabazas, situated in the District of San Ignacio, the areas, monuments, boundaries and coterminous tracts of which are stated in the corresponding proceedings of survey executed in the year 1807 by the commissioned surveyor, Don Manuel de Leon, veteran Ensign and late Commandant of the presidio of Tubac, as appears from the information obtained at the instance of said departmental Treasury, from which it also appears that the original titles of grant and confirmation of said temporalities still exist, which temporalities have now been valued at five hundred dollars in accordance with Article 2d of said supreme decree of February 10, 1842.

"Whoever desires to make a bid come forward and make it to this departmental Treasury, where it will be received in conformity with the laws, with the understanding that the final sale is to be made now to whomever should be the highest bidder."

In which act Don Francisco Alexandro Aguilar, a merchant and resident of this port, appeared and made the bid of five hundred dollars, at which said temporalities are appraised; and no other bidder having appeared and the hour for midday prayer of this day having already struck, the public crier finally said: "Once, twice, three times; sold, sold, sold; may it do good, good, good to Don Francisco Alejandro Aguilar."

In these terms this act was concluded, the aforesaid farming lands and lands for raising cattle and horses of the depopulated townsite and stock farm of the temporalities of Tumacacori and Calabazas being publicly and solemnly sold to Don Francisco Alexandro Aguilar, a merchant and resident of this port, for the sum of five hundred dollars.

And in due witness thereof and for the usual purposes these proceedings were closed and entered and I signed them together with the party in interest and my undersigned attendant witnesses.

Witness: JOSE MARIA MENDOZA.

Witness: VICENTE IRIGOYEN.

IGNACIO LOPEZ.

FRANCISCO A. AGUILAR.

Opinion of the Court.

MR. CHIEF JUSTICE FULLER, after stating the case as above, delivered the opinion of the court.

In order to the confirmation of any claim, the Court of

In which legal terms was concluded the sale of the farming lands and lands for raising cattle and horses, which comprise the four leagues of the depopulated townsite of Tumacácori and the two sitios of its stock farm, Calabazas, and other annexed points, all temporalities, situated in the jurisdiction of the District of San Ignacio, the original expediente remaining deposited in the archives of this Treasury as perpetual evidence, with the understanding that when the original titles of Tumacácori and Calabazas are obtained, they shall be aggregated to the present one.

Whereas the agricultural lands and lands for raising cattle and horses, which comprise the four leagues of the depopulated town of Tumacácori and the two sitios of its stock farm of Calabazas and other annexed points, all temporalities, in the jurisdiction of the District of San Ignacio, have been sold to Don Francisco Alejandro Aguilar, a resident and merchant of this port, for the sum of five hundred dollars, which sum together with the others pertaining to the Treasury, he has paid into this departmental Treasury, I, therefore, in use of the powers the laws on the matter, as also the supreme decree of the 10th of February, 1842, conceded to me, by the present title and in the name of the Mexican Nation and of the Supreme Government formally cede, sell, give and adjudicate the said farming lands and lands for raising cattle and horses, which comprise the four leagues of the depopulated townsite of Tumacácori and the two sitios of its stock farm of Calabazas and other annexed points already mentioned to the said purchaser, Don Francisco Alejandro Aguilar, by way of sale, and with all the qualities, solemnities, firmness and subsistence the law establishes, for himself, his heirs, children and successors, with all their entrances, exits, lands, timber, groves, shrubs, pastures, centres, circumferences, waters, springs, watering places, uses, customs, servitudes and other things pertaining to said possessions, with their enclosures, metes and bounds for the sum of five hundred dollars, at which they have been sold to said Francisco Alejandro Aguilar, with the precise condition that the said buyer, and his successors in their case, are to maintain the above mentioned agricultural lands and lands for raising cattle and horses that comprise the four leagues of the depopulated townsite of Tumacácori and the two sitios of its stock farm of Calabazas populated, possessed, cultivated and protected, without passing beyond their metes and bounds and without their being totally abandoned; with the understanding that if the said abandonment and depopulation of said farming and grazing lands should take place for the space of three consecutive years, by the neglect or fault of their owners or possessors and there should be any person who denounces them, in such event after verification of the fact, they shall be declared public lands

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Private Land Claims, under the act creating that tribunal, (26 Stat. 854, c. 539,) must be satisfied not merely of the regularity in form of the proceedings, but that the official body or person assuming to make the grant was vested with

and shall be sold at public sale, on account of the National Treasury, to whomever should be the highest bidder, excepting, as is just, those cases where the abandonment, depopulation or lack of protection are on account of the notorious invasion or hostilities of enemies or epidemics or other like causes, and only for the period or periods of such occurrences, cautioning as the aforesaid Don Francisco Alejandro Aguilar and his successors are strictly cautioned that they are to restrict themselves to the belongings, metes and bounds of the aforesaid agricultural and grazing lands of the townsite of Tumacácori and its stock farm of Calabazas, constructing and maintaining on said possessions the necessary monuments of stone and mortar under the penalties established by the laws in case of neglect.

And with the powers, which they and the divers superior provisions that govern the matter, concede and confer on me, I order and require respectively of the Judges, Justices and local authorities that at present are and shall hereafter be in the District of San Ignacio, that, for the sake of the good and prompt administration of justice and in observance of the aforesaid legal provisions they do not permit the said Francisco Alejandro Aguilar nor his successors to be, in any manner, disturbed, annoyed or molested in the free use, exercise, property, dominion and possession of the said agricultural lands and lands for raising cattle and horses of the townsite of Tumacácori and stock farm of Calabazas, but rather shall watch and see with the greatest efficacy that they are always protected and maintained in the quiet and peaceable possession to which they are entitled by legitimate right, so that, in this manner, they may freely have the benefit of, enjoy, possess, sell, exchange, barter, donate, transfer, devise, cede and alienate the aforesaid agricultural lands and lands for raising cattle and horses of the four leagues of the townsite of Tumacácori and its stock farm, Calabazas, and other annexed points, at their free arbitrament and election, as absolute owners and proprietors of said possessions, with the understanding also that just as soon as the original titles of said agricultural and grazing lands are obtained they shall be aggregated to the present ones, and the transmittal and delivery of said original documents are considered as made and verified from this moment in favor of said party in interest, Don Francisco Alejandro Aguilar.

In which terms I have issued this title of formal sale, transfer and adjudication to said Mr. Aguilar, his heirs and successors, delivering it to the former for his security and other convenient uses, after entry thereof in the proper place.

Given in the port and village of San Fernando de Guaymas, on the nineteenth day of the month of April, eighteen hundred and forty-four, authenticated and signed by me, the Treasurer of the Department, sealed with the

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authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified; and the same rule applies to this court on appeal. *Hayes v. United States*, 170 U. S. 637; *Ely's Administrator v. United States*, ante, 220.

The titulo shows that Ignacio Lopez, treasurer of the department of Sonora, assumed to make the sale and grant of the lands in question, in the exercise of sole authority, *ex officio*, under the decree of February 10, 1842, and article 73 of the law of April 17, 1837, as being property "pertaining to the department of temporalities," the value whereof did not exceed five hundred dollars. He asserted the power to determine, alone, that the lands were of the temporalities; that their value was not over five hundred dollars; and to sell and grant them independently of other officials than himself.

The Court of Private Land Claims held that if the lands belonged to the class of temporalities it was clear that the treasurer of the department had no power to make a sale by his sole authority, whether the value exceeded five hundred dollars or not; and if the lands did not belong to that class, nevertheless there was the same want of power under the laws of Mexico in relation to the disposition of the public domain.

Many of the laws in this regard have been set forth in *United States v. Coe*, 170 U. S. 681; *Hayes v. United States*, *supra*; *Ely's Administrator v. United States*, *supra*; and other cases, and the statement of so much thereof as particularly bears on the matter in hand involves some repetition.

By the law of January 26, 1831, a general department of revenues was established, under whose control all branches of the treasury were placed, except the general administration of the mail and of the mint. A general director and three auditors were provided for, to be appointed by the government, and the general department was divided into three sec-

seal which this Treasury uses, before my undersigned attendant witnesses, in the absence of a Notary of the Treasury or a Notary Public, there being none, according to law.

IGNACIO LOPEZ.

Witness: JOSE DIEGO LABANDERA.

Witness: JOSE MARIA MENDOZA.

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tions, of each of which an auditor was the chief. 2 Dublan and Lozano Mex. Laws, 308.

May 21, 1831, a law was passed creating commissaries general and commissariats, and on July 7, 1831, regulations were issued under the law of January 26. The first auditor was made chief of the first section, having charge, among other things, of "national property in which is included, under article nine of the law of August 4, 1824, that of the inquisition and temporalities, and all other country or town property belonging to the Federation." 2 Mex. Laws, 329, 341.

The tenth regulation provided that the general department should take an exact account of the number, location, value, condition and present method of administration of all the property and estates of the nation, in which were included those of the inquisition and temporalities, and all others that belong to the public exchequer, in accordance with the law of August 4, 1824; should see to the thorough collection of the proceeds, as provided in the law of January 26 and other laws; and should do whatever it considered most beneficial in regard to the sale, lease or other means of administration that might be advisable, in whole or in part, of the property in question.

Certain regulations were thereafter prescribed, and set forth in a circular of July 20, 1831, 2 Mex. Laws, 351, whereby the commissariats general were located in the capitals of certain enumerated states; and, at designated points in others, that of Sonora being at Arizpe; but the commissaries, if they thought a change would be advantageous, were required to bring it to the notice of the government with their reasons.

Articles 126 and 127 of these regulations read:

"126. All purchases, sales and contracts made on account of the treasury, whatever be their purpose, shall be made by the commissaries general sitting as boards of sale; but before convoking them, it shall be absolutely necessary to receive first the order therefor, either from the supreme government, communicated directly or through the treasury general, or rather from the directory of revenues, when it relates to matters subject thereto.

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"127. Said board shall hold its sessions in the room most suitable for the purpose in the commissariats, or in the public place nearest to those offices, and the regular members shall be the commissary or sub-commissary, who shall preside, the senior officer of the treasury, or the one who acts in his stead, and the attorney general, where there is one, and each of these employés shall take the place or seat to which he is entitled in the order in which they are named."

Besides the regular members, it was provided by Article 128 that there should be special members, depending on the character of the sale, purchase or contract being made, as for instance, when it related to the offices or revenues in the federal district subject to the directory general, the auditor in charge should attend; and if subject to any of the other departments, the chief clerk of the bureau of accounts, etc. If it related to supplies for army service, the officer appointed by the proper inspector should be present; if to business pertaining to the artillery arsenals, etc., the chief officer thereof; if to hospital service, the first assistant of the medical corps; if to fortification works, the chief of the corps of engineers; and if, finally, to other matters, the employé of the nearest related department appointed by the commissary general. Timely notice was required to be given to the regular and special members of the day and hour of the sale, which ordinarily should be held at ten o'clock in the morning.

It was also provided that if there was a notary public in the place, he should necessarily be present at the sessions of the board, and that whatever was done therein should be certified to by him, or by two attending witnesses, if there was none; that the sales or purchases intended to be made should be published for at least eight days beforehand by placards put up in the most public and frequented places, and also inserted in newspapers of greatest circulation, if there were any, care being taken that the notices contained the necessary information about the matter and its most essential circumstances; that when the sale was opened, and the customary proclamations made, all lawfully made bids should be received

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until the day of final sale, which should be made "to the bidder who offers the most advantages to the treasury, as determined by an absolute majority of the votes of the board, which minute and everything that may have occurred at the sale shall be entered on the book, which the commissary and sub-commissaries shall keep for the purpose, and which the members shall sign with attending witnesses or with the notary, who, besides, shall draw up all other necessary papers. In the absence of a notary, a clerk, whom the commissary shall bring for the purpose, shall draw up the minutes and the conclusions." The proceedings were then to be forwarded with a report thereon to the supreme government, "without whose approval the purchase, sale or contract shall not be carried into effect;" and it was also provided that "when there is evidence that any member of the board has bought or sold at the sale, himself or through a third person, the sale shall be void and he shall be punished with the penalties the laws impose upon those who commit like abuses."

In 1835 the state legislatures were abolished and departmental bodies established; and the bases for a new constitution were adopted, followed by such constitution dividing the country into departments, the interior government of which was entrusted to the governors in subordination to the general government. 3 Mex. Laws, 75, 89, 230, 258.

By a decree of April 17, 1837, the principal officer of the general treasury in each department was designated as the superior chief of the treasury, and on him and his subordinates was conferred by article 92 the powers and duties formerly exercised by the commissary general and sub-commissaries, "in so far as they do not conflict with this decree, for in that respect all existing laws stand repealed." 3 Mex. Laws, 363.

Articles 73, 74, 75 and 76 were as follows:

"73. All the purchases and sales that are offered on account of the treasury and exceed five hundred dollars, shall be made necessarily by the board of sales, which, in the capital of each department, shall be composed of the su-

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perior chief of the treasury, the departmental treasurer, the first alcalde, the attorney general of the treasury, and the auditor of the treasury, who shall act as secretary. Its minutes shall be spread on a book which shall be kept for the purpose, and shall be signed by all the members of the board, and a copy thereof shall be transmitted to the superior chief of the treasury, for such purposes as may be necessary and to enable him to make a report to the supreme government.

"74. The superior chiefs shall hold meetings of the boards of the treasury at least twice a month, and when they consider it necessary according to the difficulty and importance of the business. These boards shall be composed of said chief, the departmental treasurer, the attorney general of the treasury, the principal collector of the revenues and the auditor of the treasury, who shall act as secretary thereof.

"75. The object of the board of the treasury shall be to procure the prosperity and increase of the revenues of the treasury, the most easy and prompt collection thereof, to promote the economies that should be made, to expedite such grave matters of difficult solution as the superior chief may bring to its knowledge and to make a report to the latter of bad management, improper conduct, failure to comply with their duties and other omissions of which they may have knowledge, or may have observed in the employés of the treasury of the department.

"76. The minutes of the board shall be spread on the proper book, which shall be signed by all the members thereof, and an authenticated copy transmitted to the superior chief of the treasury to enable him to make a report to the supreme government, when the case requires it."

By a law of December 7, 1837, it was made the duty of the governors, among other things, "to preside over the boards of sale and of the treasury, with power to defer the resolutions of these latter until, in the first or second session thereafter, the matter under consideration is more carefully examined into." 3 Mex. Laws, 443.

By Article 140 of a decree of June 13, 1843, it was made the

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duty of the governor of each department to publish the decrees of the president and cause them to be complied with; and by subdivision 10 of Article 142, the governor was made the chief of the public treasury of the department with general supervision of the same. 4 Mex. Laws, 428. And in passing it may be remarked that there is absolutely nothing in this record to indicate that the governor participated in any way in the act of sale, while the terms of the testimonio clearly show that the departmental treasurer proceeded and assumed to proceed upon his own sole authority.

December 16, 1841, the office of the superior chief of the treasury created by the decree of April 17, 1837, was abolished, and it was provided that the departmental treasurers should continue for the present to perform the functions of their office as established by the law creating them, and also to perform those of the discontinued chiefs of the treasury, except such as were assigned to the commandants general, who were to be inspectors and visitors of the treasury offices, and to see that the public revenues were well and faithfully collected, administered and disbursed; and to make timely reports to the supreme government of what they observed, which should be brought to its attention. 4 Mex. Laws, 75.

On February 10, 1842, the following decree was issued:

"Antonio Lopez de Santa Ana, etc.

"Article 1. The boards of sale in the several departments will proceed to sell, at public auction, to the highest bidder, the properties (fincas) situated therein that pertain to the department of temporalities.

"2. No bid will be admitted that does not cover the amount considered to be the value of the property (fincas), computed from the amount of the leases, which shall be considered as the interest thereof, at the rate of five per cent.

"3. The bids shall be made for cash, which shall be paid when the sale is approved, less the amount of the burden imposed on each property (fincas), which the buyers shall continue to recognize with a mortgage thereof.

"4. No action or claim, which the actual lessors of the property (fincas), in question, may intend to set up for im-

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provements or under other pretext shall, in any manner, embarrass the proceedings of the board of sale in making the sales, but the right of parties in interest to apply to the supreme government, or to the proper authorities, shall remain intact.

"Therefore I order this to be printed, published and circulated, and demand that it be complied with." 4 Mex. Laws, 114.

Lopez certified that it was in virtue of this decree that he had sold the lands in question as belonging to the class of temporalities, and as being of a value not exceeding five hundred dollars, in which case he assumed that he was authorized to sell irrespective of the board of sales in view of Article 73 of the decree of April 17, 1837. The argument is that as that article provided that all purchases and sales exceeding five hundred dollars should be made necessarily by the board of sales, therefore all property under that value could be sold by the departmental treasurer alone; but the difficulty is, as pointed out by the Court of Private Land Claims, that even if that provision operated in the manner contended for, it had no application to a sale under the decree of February 10, 1842, which specifically directed that the sales should be made by the board, and contained nothing to suggest that the value of the property affected the power and duty of the board in any way.

The decree recognized the existence of the boards of sale as the only proper official organs to accomplish the results desired, and it was this decree that was relied on as justifying the proceedings. If these lands were not of the temporalities, then the basis of the sale utterly failed, as the decree applied only to property of that class, and if of the temporalities the sales were to be made by the board.

In relation to Article 73 of the law of 1837, some further observations may be added.

The regulations of July 20, 1831, and the law of April 17, 1837, treated of the same subject-matter, and must be read together; and prior laws, so far as not conflicting, were expressly saved from repeal by Article 92 of the latter act.

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By section 73, the board of sales was necessarily to make sales exceeding five hundred dollars, but nothing was said as to sales for less than that sum. This would seem to have left the law of 1831 in force in respect of the making and the conduct of sales of property having a value below that amount, and whether the board of sales consisted of the membership prescribed by section 73, or was composed in some respects of a different membership, is not material. While these various laws are rather confusing in their number and minuteness, nothing is clearer than that the power to make sales and grants was vested in the treasury department of the nation and governed by strict rules and regulations, none of which contemplated that any single officer could make the sales. It is enough that the departmental treasurer did not possess the power, acting singly and on his own responsibility, to conclusively determine to what class lands belonged, and their value, and having decided these points, thereupon to exercise the sole power of sale.

Tumacácori, Calabazas and Huebabi are said to have been originally separate and distinct pueblos and missions, of which the two latter were abandoned as early as December, 1806, when the native Indians of Tumacácori and the governor of said Indians presented petitions to the governor and intendente Conde to give them title in accordance with the royal instructions of October 15, 1754, and of Article 81 of the royal ordinances of December 4, 1786, (alleging the loss or destruction of their old title papers,) of the lands embraced in the *fundo legal* and the *estancia* of each pueblo and mission, whereupon the grant of 1807 was made.

The *titulo* refers to some lands acquired by purchase, though the record leaves that matter entirely vague and uncertain, and declares the grant to be made to the pueblo and natives of Tumacácori, that they may "enjoy the use and freely possess at will and for their own benefit in community and individually, and for the decent support of the church of said mission, but under the condition that in no case and in no manner shall they alienate at any time any part of said lands which are adjudicated and assigned to them, since they are

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all to be considered as belonging to the Republic and community of natives alone, for their proper use, as well for sowing purposes as for stockraising and the increased prosperity of the same."

This was in accordance with the general rule that the missionaries and Indians only acquired a usufruct or occupancy at the will of the sovereign. *United States v. Cervantes*, 18 How. 553.

Prior to 1829, the tribunal of the inquisition had been abolished by the Cortes, and the monastic and other religious orders suppressed, and on the 10th of May of that year it was ordered, through the department of the treasury, that "the property in which consist the funds of the temporalities of the ex-jesuits, and monastics, and the rural and urban estates belonging to the inquisition" be sold at public sale to the best and highest bidder. (2 Mex. Laws, 108.) May 31, 1829, the commissary general of Mexico published a "list of the urban and rural estates relating to the temporalities of the ex-jesuits and suppressed monastics, with a statement of their values, the burdens they carry, and annual revenue," (Ib. 117,) which did not include the lands in question. The departmental treasurer did not claim, and manifestly did not acquire, the power to sell these lands under the order of May 10, 1829, or the regulations of July 7, 1831, bearing on that subject.

By a decree of April 16, 1834, (2 Mex. Laws, 689,) the missions of the Republic were secularized, that is to say, converted from sacred to secular uses, and so far as these lands could have been regarded as temporalities, that is, profane property belonging to the church or its ecclesiastics, that decree changed their condition.

And, as many years before the sale in question, the lands of this pueblo and mission were abandoned, it would seem that they thus became part of the public domain of the nation, and that as such the only laws applicable to their disposal were the laws of the nation in relation to its vacant public lands, to which the proceedings in this instance do not purport to have conformed or to have been made under them.

We concur with the Court of Private Land Claims that in

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either view there was a fatal want of power in the departmental treasurer to make the sale, and it is not asserted in the petition, nor was any evidence introduced to show that his action was participated in or ratified by the governor, or by the national government in any manner. And this is not a case in which the sale and grant can be treated as validated by presumption.

Decree affirmed.